

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

ORIGINAL

75-1331

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P/S

United States Court of Appeals
For the Second Circuit

Docket No. 75-1331

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

CIRO R. RICCARDI,

Defendant-Appellant.

**BRIEF AND APPENDIX ON BEHALF
OF APPELLANT**

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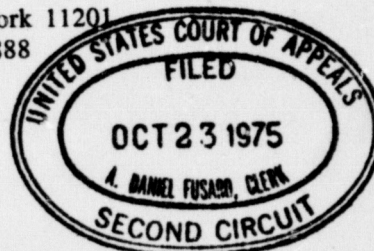


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Defendant-Appellant.

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BRIEF ON BEHALF OF APPELLANT

PRELIMINARY STATEMENT

This is an appeal from a judgment of the United States District Court for the Eastern District of New York, rendered August 29, 1975, convicting appellant and another of using extortionate means to collect a debt in violation of 18 U.S.C., Section 894, and sentencing him to twenty years imprisonment and to be examined pursuant to 18 U.S.C. Section 4208(c) with a possibility of modification of sentence thereafter.

This action was tried to a jury, Hon. Thomas C. Platt, presiding, which found appellant innocent of making an extortionate loan in violation of 18 U.S.C., Section 892. Appellant is at liberty pending the determination of this appeal.

STATUTES

18 U.S.C. Section 891

Definitions and rules of construction.

For the purposes of this chapter:

(1) To extend credit means to make or renew any loan, or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

(2) The term "creditor", with reference to any given extension of credit, refers to any person making that extension of credit, or to any person claiming by, under, or through any person making that extension of credit.

(3) The term "debtor", with reference to any given extension of credit, refers to any person to whom that extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

(4) The repayment of any extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(5) To collect an extension of credit means to induce in any way any person to make repayment thereof.

(6) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(7) An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(8) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and territories and possessions of the United States.

(9) State law, including conflict of laws rules, governing the enforceability through civil judicial processes of repayment of any extension of credit or the performance of any promise given in consideration thereof shall be judicially noticed. This paragraph does not impair any authority which any court would otherwise have to take judicial notice of any matter of State law.

18 U.S.C. Section 892

Making extortionate extensions of credit.

(a) Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined not more than \$10,000 or imprisoned not more than 20 years, or both.

(b) In any prosecution under this section, if it is shown that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this subsection is nonexclusive and in no way limits the effect or applicability of subsection (a):

(1) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor.

(A) in the jurisdiction within which the debtor, if a natural person, resided or

(B) in every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business at the time the extension of credit was made.

(2) The extension of credit was made at a rate of interest in excess of an annual rate of 45 per centum calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

(3) At the time the extension of credit was made, the debtor reasonably believed that either

(A) one or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the nonrepayment thereof had been punished by extortionate means; or

(B) the creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof.

(4) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded \$100.

(c) In any prosecution under this section, if evidence had been introduced tending to show the existence of any of the circumstances described in subsection (b) (1) or (b) (2), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension.

18 U.S.C. Section 894

Collection of extensions of credit
by extortionate means.

(a) Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means

(1) to collect or attempt to collect any extension of credit,
or

(2) to punish any person for the nonrepayment thereof,

shall be fined not more than \$10,000 or imprisoned not more than 20 years, or both.

(b) In any prosecution under this section, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

(c) In any prosecution under this section, if evidence has been introduced tending to show the existence, at the time the extension of credit in question was made, of the circumstances described in section 892(b) (1) or the circumstances described in section 892(b) (2), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat,

the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of the collection or attempt at collection.

FACTS

The defendants in this case were charged with making extortionate loans to one, FRANK DiPALMA, in violation of 18 U.S.C., Section 892, concerning which they were both acquitted, and one count of using extortionate means to collect a debt from Mr. DiPalma, in violation of 18 U.S.C. Section 894, concerning which both defendants were convicted.

The first witness was Sgt. JAMES OLESKA, a New York City police officer attached to the District Attorney's office in Brooklyn. He testified that after DiPalma saw him in the office, he spent the night at DiPalma's house. At about 11:00 P.M. there was a loud pounding on the door and three men were heard yelling outside (A 34 *), but the witness could not identify any of the people involved (A 35-36). The next day he turned DiPalma over to the F.B.I. (A 42).

On cross examination it was established that Officer Oleska made no entries in his memorandum book or other reports which in any way described or told of the incident that occurred in DiPalma's house, wherein the men tried to gain entrance. The officer admitted that he had not put this in, even though he considered it an important aspect of the case, important enough for him to call for a back-up team to stay outside the house. (A 48-49) He also did not try to obtain the license plate number of the car and could not identify either defendant in Court. (A 50)

* Numerical references and references preceded by the letter "A" refer to Trial Minutes.

The next witness was ARTHUR RUFFELS, who said that he was an F.B.I. agent assigned to the Organized Crime Division. (22 A*) There was strenuous objection to this characterization by the defense attorneys, but a motion for a mistrial was denied. (22 A) After extensive argument in which it was point out that such a charactization placed the idea in the jury's mind that the defendant had organized crime or Mafia links, the only action that the Court took was to charge the jury that the section to which an agent was assigned was immaterial. (25A-26A)

The agent testified that he met DiPalma in the Rackets Bureau office of the Brooklyn District Attorney's office, where he took a written statement and opened an F.B.I. file. (A 85-86) He was allowed to say, over objection, that he arranged protection for DiPalma (A 87-89). The witness said that on June 2, 1972 he placed a body transmitter on DiPalma and took him to Avenue X and McDonald Avenue. (A 94-95) He remained in the automobile with a camera and recording equipment and DiPalma met with two men. Photographs were introduced. The objection was made that this entire transaction was beyond the scope of the indictment because it occurred on June 2, 1972, (A 98-100) and the indictment alleged in both counts that the action occurred between May 1, 1971 and May 18, 1972. Ruffels identified the cassette recording of the conversations, a transcript of the tape and the tape was played for the jury, who were also given copies of the transcript. The jury was told that the recording was evidence rather than the transcript. However, the tape did not work at that time and FRANK DiPALMA, the main * Numerical references followed by the letter "A" only refer to the appendix.

witness, was called prior to the actual playing of the recording.

He said that he was a car cleaner with the New York City Transit Authority and had been a bookmaker from 1970 to 1972, a period of two years. (16) He identified the defendant, CIRO RICCARDI, and said that he needed money and was taken by someone to see Riccardi, where he requested a loan of \$1,000.00. (19-20) Appellant supposedly said that he would give him the money the following Friday. The next week, the witness came back, received the \$1,000.00, and the agreement was that he would have to pay \$50.00 interest per week over the principal sum. That means that the following week \$1,050.00 would be due and he would be paying \$50.00 a week until he paid back the \$1,000.00. (20-22) DiPalma said he paid \$50.00 a week for three months and then borrowed an additional \$1,500.00 more from the appellant. Appellant then told him that the interest, or "vig" would be \$125.00 per week from then on, and DiPalma agreed to that sum. (23) At that point the interest he had already paid came to about \$1,000.00 for the previous three month period. DiPalma said he paid the \$125.00 amount for approximately five or six months when he needed another \$1,000.00, and saw Riccardi again. At that point the meeting took place in a Lincoln automobile, and a few days later he got the additional money, and the interest ran to \$175.00 per week. (28). The total principal debt at that time was \$3,500.00.

DiPalma said his financial condition was very bad. He described himself as a degenerate gambler and said he owed approximately \$12,000.00 or \$13,000.00. (27 A) He made a salary of \$140.00 per week (28 A)

and said he was able to pay the \$175.00 for approximately four or five months. (29 A) There came a time in late 1972 or early 1973 when he could not pay any more because he did not have the funds. (34) He went to see Riccardi at the motorcycle shop where they had met before and Riccardi offered to reduce the amount to \$150.00 a week. The witness allegedly said it would still be hard, and Riccardi told him that that was the way it had to be. A few weeks went by, but he did not pay any money because he could not afford it. He hid out for a week and saw Riccardi a week or two later on Avenue X. (30 A-31 A) At one point he was driving on 85th Street in Brooklyn and a car stopped him. Riccardi and Gigliotti had been driving in the car and they got out and had a conversation with him in front of a cemetery. (31 A) Riccardi asked where he had been and DiPalma replied that he hadn't had a chance to see him. DiPalma said that Riccardi told him if he did not get the money up, he would put him in the hospital where no doctor's bills would be able to pay for it. (32 A) Gigliotti allegedly said it did not pay for DiPalma to get hurt and that he should pay Riccardi the money he owed him. (32 A)

DiPalma testified that he came to see Riccardi about two days later and made out a phony check for \$900.00 which he gave to Riccardi, in order to reduce the principal and reduce the interest to \$125.00 a week. (42). The record is not clear if he actually gave the check to Riccardi, but in any event the check never cleared. The witness said he did not know what to do, so he went to the Coney Island police station, spoke to a detective and thereafter went to the District

Attorney's office (43-46). The next morning he met with the F.B.I. (47) He also testified that the night of May 17, 1972 the police drove him home and stayed with him. (47-48) Some people pounded on the door that night, but he would not let them in. The people left, and the witness said he looked through the window and recognized one as Ciro Riccardi (48-49)

About a week later he was at home and a friend of his came and spoke to his wife. DiPalma went down to the corner and met Riccardi. (49-50) He said that Riccardi punched him a few times in front of his friend. (50) It should be noted that this event also occurred outside the date alleged in the indictment, since it was about a week after he went to the police, making it around May 27-28 , 1972. DiPalma said that he was put against the car, having been struck by Riccardi, when his wife came down with a stick and Riccardi fled around the corner (51) DiPalma said he spoke to Arthur Ruffels, described the beating he had received, and the F.B.I. took pictures of him. (52)

DiPalma also described how the agent put a body transmittor on him and drove him to Avenue X where he met with Ronald Gigliotti. He asked for Riccardi who was not around at the time. DiPalma insisted that Riccardi see him. (54) This conversation also occurred beyond the dates alleged in the indictment, the actual date of the conversation being June 2, 1972. Motions to exclude the conversations were denied. (55-59) After DiPalma insisted on seeing Riccardi, Gigliotti told him to wait there. At any rate, Gigliotti apparently arranged for DiPalma to meet Riccardi at a furniture store, and after DiPalma went there,

Riccardi drove up in a car.(65) They spoke about the money and the witness denied ever being a loan shark or having taken bets from Riccardi or Gigliotti. He also said he paid a total of \$7,000.00 interest on a debt of \$3,500.00. (68)

The tape was then played for the jury. Cross examination was put off until Ruffels completed his testimony and was cross examined.

Ruffels said that he found out that DiPalma was a bookmaker. A fact that he found out at the Eastern District Strike Force. (33 A) He also said that the on and off switch on the tape machine was under the control of DiPalma while he was talking, and he told DiPalma before the conversation what type of conversations were necessary to base a prosecution on, such as talking about "vig". (103) He acknowledged that the tape was not so clear and that he had to prepare three transcripts before the final one was adequate. The witness denied instigating the meeting of June 2nd, and said that DiPalma told him that they used to meet every Friday at 3:00 P.M., and what Ruffels merely did was suggest he keep the meeting that DiPalma would normally attend. (107) However, it was pointed out that there were no meetings on May 19th and May 26th, so that their usual practice of meeting on Fridays had apparently been discontinued prior to the June 2nd meeting. (101-111) It was also brought out that Agent Ruffels never made an interview report about the occurrence of May 15th in front of the cemetery, even though Ruffels admitted that he interviewed DiPalma on May 18, 1972, three days after that incident apparently took place. (34 A) In fact no record of that cemetery incident could be found in any written

report.(35 A) The agent also admitted that in discussing what type of conversations DiPalma should have with Riccardi, he suggested that a "threat would help". (36 A) There also apparently was a conversation which related to the idea of getting Riccardi riled up or made at DiPalma.

The witness said that where DiPalma originally met Gigliotti on June 2nd to where he met Riccardi took about eleven minutes, and on redirect Ruffels said that the reason he shut off the tape was so that there would be enough to record the conversation. (134) He said that he really had the controls to shut the tape on or off, although he had previously said he thought the controls were in DiPalma's custody. He saw Riccardi's vehicle approach and that there were no threats made, shouts, weapons or other signs of violence during the conversation.(37 A) In fact, Riccardi may have been a little apprehensive, since he searched DiPalma. (38 A)

DiPalma was recalled for cross examination. He said that he was a bookmaker for two years. He discussed the entire operation of his bookmaking business, which basically consisted of taking bets and hedging them at the track. (39 A-43 A) He described himself as a sometime terrible bookmaker, who really just made bets for people. (46 A - 47 A) He testified that he told Ruffels he was a bookmaker, although Ruffels previously said that he found out that fact at the Eastern District Strike Force and not from DiPalma. (33 A)

The witness said he had outstanding loans with the First National City Bank in the amount of \$5,000.00, Chase Manhattan Bank in the amount of \$2,000.00, and all sorts of other obligations. He could not recall what he put down on the application to the First National City Bank as the purpose of the loan and said he made up all sorts of reasons which were not necessarily true. (48 A-52 A) DiPalma admitted that he used the proceeds of all these loans for gambling, even though he knew that a false application for a bank loan was a Federal crime. (53 A-54 A) DiPalma also admitted that he owed money to Household Finance, Beneficial Finance and he also owed Commercial Credit Corp. between \$1,000.00 and \$1,400.00. (55 A-58 A) He also owed Bankers Trust about \$2,200.00 to \$2,300.00, but he thereafter went into personal bankruptcy so that he did not have to pay anyone back. (59 A - 60 A)

When he first met Riccardi his friend, Patty McKuehn was with him and McKuehn heard part of the conversation wherein he told Riccardi he needed \$1,000.00 for his bookmaking business. (210) DiPalma described what the term "vig" means, although it was established that he told the grand jury he did not know its definition. (61 A) He now said that his statement to the grand jury was a honest mistake, since he always knew what the term referred to. (62 A) DiPalma denied ever lending money at usurious rates of interest. (62 A) He denied that he ever took numbers or bets (63 A) and was totally confused about debts, remembering practically nothing. (218-228) He said he made his own occasional bets on basketball and baseball

but never took any sort of action himself. (64 A) He also denied that Arthur Ruffels told him what type of conversation to obtain on the tape recording. (65 A) He said that in fact Ruffels told him not to provoke Riccardi because they feared for his life. (66 A) He previously had testified that he paid \$125.00 a week for three months, a sum totalling \$1,500.00, and now when he reiterated that testimony he could not say where he got the \$1,500.00 to make the payments. (253-254) He said he did not know, he could have obtained it from his father or mother, but he was able to recall who was pitching for the White Sox on a specific occasion where they won four straight games. (67 A-68 A) He also talked about the \$175.00 a week that he paid for two months, totalling \$1,400.00, and again could not detail where he got the money from, but he merely said he could have borrowed it from a bank. (255) The witness made a lot of bets, place a lot of numbers himself, but could not or would not identify the people involved. (257-258) He claims he bet thirteen days in a row with the Chicago Cubs but could not identify the person he placed those bets with except by first name. (258) He also denied ever telling the F.B.I. that he told one, HANK DAVERSA, to Riccardi to borrow money, (273), although the F.B.I. report said that he had made that statement. (274-275) DiPalma also denied having taken TONY BASILE to see Riccardi, although he had told the grand jury that on one occasion Basile accompanied him to see Riccardi. (275-276, 298) In fact, he said that he never met Riccardi at a time when he was with someone else, so that there was no one who could verify that he actually

had all those meetings. (280) The witness became so confused that he even became unsure whether on the third occasion that he borrowed money from Riccardi the meeting occurred in a Lincoln automobile or at the motorcycle shop, or at a lucheonette. (310) The witness' memory became so unclear he could not even remember what he said the day before. (317) In fact, he was not even sure whether he paid \$175.00 a week or \$50.00 a week in the months preceding his visit to the F.B.I. (321-322)

He said that the bank loans were used to pay the interest to Riccardi, but it was then established that all but one loan were taken out before he ever met Riccardi. (322-323)

In fact, the witness even attempted to recant some of the information he put in the petition of bankruptcy which he swore to in open court. (64 A - 70 A)

The witness thereafter attempted to evade practically every question asked of him and indicated his total disregard for the oath he had taken. (71 A - 73 A, 75 A - 77 A)

During cross examination by Gigliotti's attorney, counsel made a big point about whether the witness had been coached during the lunch break as to one question. The intimation was that the Assistant United States Attorney or one of the agents might have suggested an answer. In fact, the witness was specifically asked whether Mr. Ruffels or Mr. Naftalis talked to him before he went out to lunch on the day in question. (78 A) The witness denied it. The Court called both attorneys to the bench and told the attorney that he had better be

careful because he had given the Mr. Naftalis permission to have a long lunch hour because he was going to the dentist. The Court told the attorney he was trying to create a false impression in the jury's mind and that the attorney was not doing a very nice thing by taking the whole matter out of context. In fact, the Court called the entire matter nonsense. (81 A) Mr. Naftalis made a report to the Court that after he left the Court he went to his office, put his files away and went to the dentist by car. (82 A) Thereafter, when Mr. Newman pursued the line again in front of the jury, the Court told the jury that Mr. Newman knew that Mr. Naftalis went to the dentist and he persisted in asking the question trying to create an erroneous impression in the mind of the jury. In fact the Court actually said:

"THE COURT: The reason why I interrupted Mr. Newman's questioning is, last Thursday before lunch Mr. Naftalis asked the Court for permission to go to the dentist, that's why I adjourned earlier during the Thursday lunch hour, and Mr. Newman knows that Mr. Naftalis went to the dentist during the noon hour and yet he's persisted in asking these questions trying to create an erroneous impression in your mind. Mr. Naftalis has just told me that he did go to the dentist during the noon hour and didn't talk to this witness."

(83 A)

The next witness was JOAN DiPALMA, who described the incident when Riccardi punched DiPalma in the street. (540-541) She said that the fists were flying. Her husband called her name and she ran down with a stick. (541) When she got there DiPalma and his friend, Patty, were standing by the car but Riccardi had already gone around the corner, so that she never saw a punch actually struck.

(84 A - 85 A) She never saw Riccardi actually hit her

husband.(86 A)

The government rested its case, and an application by Riccardi to put on three witnesses to testify as to the bad reputation of DiPalma was rejected. (577-578)

Appellant Riccardi then called Arthur Ruffels, the F.B.I. agent, as his own witness. He testified that he interviewed DiPalma, and on May 22, 1972, DiPalma told him that Tony Basile accompanied DiPalma on one occasion to the luncheonette when he had to pay Riccardi. (583) He also said that DiPalma told him he took Hank Daversa to Riccardi once when DiPalma went to borrow some more money. (584)

HANK DAVERSA, an employee of the Transit Authority, testified on behalf of appellant Riccardi, and said that he sometimes helped DiPalma with his betting slips. (87 A) He said that DiPalma never took him to see Riccardi and he in fact never saw Riccardi or Gigliotti in his life. (597)

DOMINICK ZICOLELLO, another Transit Authority employee, testified and said that DiPalma used to take all sorts of bets on horses and sports in general at the Transit Authority. (88 A - 89 A)

JUSTIN TOMASINO, another Transit Authority employee, said that many people placed bets with DiPalma, (91 A) and that he placed bets on numbers and horses with DiPalma. (91 A) He saw DiPalma take numbers from many people and, in fact, the witness said he hit a number once for \$250.00. (92 A) He had a hard time getting his money from the number hit and, in fact, had to chase DiPalma and had to go to his house. (94 A) DiPalma told Tomasino

not to pressure him or he would go to the F.B.I. (94 A)

This witness was a car maintainer at the Transit Authority and did a lot of extra car work on the cars of fellow employees for which he was paid and concerning which he specifically put the amounts on his income tax return. He was a very large gambler and conclusively said that DiPalma had, contrary to his testimony, been involved in policy slips, bookmaking and bet taking at the Transit Authority.

POINT I

THE REVELATION THAT ONE OF THE MAIN WITNESSES
AGAINST THE APPELLANT, AN F.B.I. AGENT, WAS
ASSIGNED TO THE ORGANIZED CRIME DIVISION
CONSTITUTED REVERSIBLE ERROR.

At the outset of the trial F.B.I. Agent Arthur Ruffels testified with respect to his role in the investigation in this case and regarding taped conversations which were later introduced against appellant.

At the outset of his testimony he identified himself as an F.B.I. agent, which normally would be quite sufficient to describe to the jury his role in the investigation. (22 A) He was allowed to answer that his official role was Special Agent and then in response to a direct question of the Assistant United States Attorney, who specifically asked him what his assignment was in May, 1972, he answered, "I am assigned to the organized crime division". (22 A)

There was strenuous objection made by all counsel in the case, a lengthy side bar conference ensued, but motions for mistrials were denied. The only thing the Court would do was merely tell the jury

that the unit the witness was assigned to was not material. (25A-26A)
The attorneys for both appellants pointed out that the jury now had the implication that the appellants were members of organized crime or the "Mafia", and it is hard to see how a reference like this could have had anything but a lasting effect in the minds of the jurors.

There has been much written in the newspapers in this country about organized crime, especially with relation to the theory that the lending of money at usurious rates of interest is one of the cornerstones of criminal activity on an organized basis.

There is little law directly in point, but it seems safe to say that the trend in this country is to recognize the serious consequences of labeling a person as a member of organized crime regarding any particular undertaking or activity that person is associated with.

For example, in situations where prison authorities have sought to classify inmates as members of organized crime or "special case" prisoners, the Courts have been striking down such a characterization. Thus, in Masiello v. Norton, 364 F.Supp. 1131 (D.Conn.1973), the labeling of someone as a member of "organized crime" was struck down and prison authorities were ordered to remove such classification. Thereafter, in Catalano v. United States, 383 F.Supp. 346 (D.Conn.1974) the alternate method adopted by prison authorities to get around the Masiello decision by labeling a prisoner a "special offender" was also struck down. It was recognized that classifying a person in such a special capacity violated due process, and that persons so characterized were entitled to hearings. In other words, if an authority is to brand

someone as belonging to organized crime, they would have, so to speak, to prove it or refrain from the characterization. The Court in Masiello said that elemental fairness required that a person be given the opportunity to rebut the organized crime label. Apparently it has been felt that the onus attached to such a label is so great that a person may never, ever remove the stigma.

More recently, the rationale of these decisions has been adopted by an as yet unreported case decided in this Court, Cardaropoli, et al v. Norton, _____ F.2d _____ (2nd Cir. September 29, 1975). In that case this Court affirmed the ruling of Judge Zampano of the United States District Court for the District of Connecticut, which required the Correctional Institute at Danbury to expunge the "special case" classification from all bureau prison files and enjoined reclassification until the subject prisoners were given hearings in a Court with certain basic concepts of due process. It seems to appellant that certain remarks made in the opinion of this Court referring to "...the grave consequences of this designation ..." (Page 79 of slip opinion), and the reference to Judge Zampano's statement that 'all the consequences of a "special offender" classification are significant' (Page 81 of slip opinion), indicate that calling a person a member of organized crime is probably just as detrimental as an improper reference to race, religion or creed.

It has generally been recognized that prisoners lack certain fundamental rights attendant to other citizens and that they are not entitled to protection in the same manner as other persons who have not been convicted of crimes. It seems clear that if this classification

is regarded as so serious for persons who are not entitled to the granting of protection, it should be even more important with respect to those who are on trial, not yet convicted, and are certainly entitled to greater protection under our concepts of due process and equal protection. There is no question that if in this case a single improper reference was made to the race, religion or background of the defendants that it would constitute reversible error, Griffin v. Illinois, 351 U.S. 12, reh. den. 351 U.S. 958 (1956); United States ex rel. Haynes v. McKendrick, 350 F.Supp. 990, aff. 481 F.2d 152 (2nd Cir. 1973), and it stands to reason that a reference to the appellant as being a member of organized crime should stand in the same category. The statement by the agent, directly solicited by the prosecutor, that he was a member of the organized crime division created the implication that the appellant was a member of organized crime. Any other inference would seem to be analogous to the case of the ostrich burying its head in the sand.

Not only is the reference to organized crime improper because it categorizes a person in a special way, but it also seems that a fair inference that the jury would draw is that the defendant, being a member of organized crime, is a man with criminal tendencies in general or a man who has on other occasions committed other criminal acts. It is basic that the Assistant United States Attorney could not have brought out other crimes except for certain exceptions, Hodge v. United States, 126 F.2d 849 (D.C. Cir. 1942); United States v. Tomaiolo, 249 F.2d 683 (2nd Cir. 1958); United States v. Harrington, 490 F.2d 487 (2nd Cir. 1973); United States v. Yaughn, 493 F.2d 441 (5th Cir. 1974). Nor would he be

able to prove a defendant's criminal tendencies as a general proposition. United States v. Nakaladski, 481 F.2d 289, cert. den. sub. nom. Coco v. United States, 414 U.S. 1064 (5th Cir. 1973); United States v. McCarthy, 470 F.2d 222 (6th Cir. 1972); United States v. Brettholz, 485 F.2d 483, cert. den. sub. nom. Santiago v. United States, 94 S.Ct. 1561 (2nd Cir. 1973); United States v. Hines, 470 F.2d 225, cert. den. 410 D.S. 968 (3rd Cir. 1972); United States v. Broadway, 477 F.2d 991 (5th Cir. 1973).

The error existed in this case at the very outset of the trial and since the case was not particularly complicated and not very much happened at the time the incident occurred, very little prejudice would have existed to the government had a mistrial been declared and another panel selected.

The error was not inadvertent, inasmuch as it did not come out by way of a voluntary response to a question by the witness, but was a specific answer to a specific query by the prosecutor. The only conclusion one can draw is that the prosecutor wanted this piece of information to be known by the jury, and he must be fully charged with the consequences of his act.

The prosecutor has no one but himself to blame for this mistake, and it seems that as a result of that conduct the appellant has been deprived of a fair trial. Any doubt in this matter should be resolved in favor of the appellant, since he in no way contributed to or caused the error to occur.

POINT II

THE COURT ERRED BY LIMITING CROSS EXAMINATION
BY THE CO-DEFENDANT'S COUNSEL AND COMMENTED
UPON THE ACTIVITIES OF COUNSEL IN SUCH A WAY
AS TO CAST ASPERSIONS UPON THE INTEGRITY OF
THE DEFENSE.

The main witness against the appellant was one, Frank DiPalma, the man who allegedly made a usurious loan from appellant and was the victim of the supposed extortionate attempts by appellant to collect the loan made. It is safe to say that Mr. DiPalma was an extremely bad witness and that he was, for all intents and purposes, discredited on cross examination. This issue is described more fully in Point III of this brief, but suffice it to say that the jury apparently felt the same way, since with respect to the first count of the indictment, based solely on testimony by DiPalma that he had made the usurious loan, the jury found both appellants not guilty. There came a point in the cross examination where Mr. Newman was cross examining DiPalma with respect to whether he had received any prompting from the Assistant United States Attorney or the agent during a lunch recess, a fact which he denied. ()

This is an important issue, since the defense always has the right to go into this area and it could have been important, since Ruffels was the one who testified about the tape and other important factors. It seemed that the Court had previously given the Assistant United States Attorney permission to go to the dentist during that lunch recess, and for that reason the normal time of the recess was extended. When the matter was pursued, the Court called counsel up to the bench and told

counsel that he was creating a false impression in the jury's mind because the Court had given the prosecutor permission to go to the dentist, and based upon the prosecutor's representation that that was what he did, the Court was willing to accept the fact that he had not in any way prompted the witness. (80 A - 83 A) After the conference, when counsel asked again whether the witness had been prompted, the Court interrupted the examination and told the jury:

"The reason why I interrupted Mr. Newman's questioning is, last Thursday before lunch Mr. Naftalis asked the Court for permission to go to the dentist, and that's why I adjourned earlier during the Thursday lunch hour, and Mr. Newman knows that Mr. Naftalis went to the dentist during the noon hour and yet he's persisted in asking these questions trying to create an erroneous impression in your mind. Mr. Naftalis has just told me that he did go to the dentist during the noon hour and didn't talk to this witness."

(83 A)

Appellant can think of nothing worse than for a Judge to specifically tell a jury that an attorney is intentionally and persistently asking questions with the purpose of trying to create an erroneous impression in their minds, and it is hard to see where there could be any excuse for a Judge to do that, since practically every Judge who has ever tried a case knows that it is fundamental that the province of the Court is not to interfere with proper cross examination by counsel or create an impression to the jury that it favors one side or the other. Where the Court indicates its belief in a defendant's guilt or creates the impression that it is interested in a conviction, such conduct is improper and should normally cause the reversal of any conviction obtained. United States v. Carabbin, 381 F.2d 133 (6th Cir. 1967); United States v. Angelo, 153

F.2d 247 (3rd Cir. 1946); United States v. Ah Kee Eng, 241 F.2d 157 (2nd Cir. 1957); United States v. DeSisto, 389 F.2d 833 (2nd Cir. 1961).

Where the Court makes comments which are designed to disparage a defendant's attorney, where it is unduly caustic toward counsel or creates the impression thereby that the defendant's case is of little substance and not worthy of belief, such conduct has always been held to be reversible. United States v. Coke, 339 F.2d 183 (2nd Cir. 1964). Similarly, the Court's comments with regard to certain factual matters, such as whether the prosecuting attorney could or could not have prompted the witness is equally condemnable, because the Court thereby becomes the unsworn witness not subject to cross examination, which deprives a defendant of his right to counsel, his right to cross examination and his right to confront witnesses. People v. Roth, 30 N.Y. 2d 99 1972; Buenaventura v. United States, 291 F.2d 86 (9th Cir. 1961). The denial of a full right of cross examination has always been held to be improper. Lindsay v. United States, 133 F.2d 368 (D.C. Cir. 1943); United States v. Newman, 490 F.2d 139 (3rd Cir. 1974); United States v. Morris, 45 F.2d 1385 (5th Cir. 1973); United States v. Cardillo, 316 F.2d 606, cert. den. sub. nom. Margolis v. United States, 375 U.S. 822 and Cardillo v. United States, 375 U.S. 822, reh. den. 375 U.S. 926, cert. den. Piselli v. United States, 375 857 (2nd Cir. 1963).

Thus, where a Court told a defense counsel to "cut it out" and instructed the jury to disregard material impeaching testimony, the error was considered substantial. United States v. Barash, 365 F.2d 395 (2nd Cir. 1966).

It is true that the cross examination discussed was made by the attorney for the co-appellant, Ronald Gigliotti, but, of course, any prompting on the part of the prosecutor would be an act which would effect the entire prosecution against both defendants. In addition, since the defendants were charged together with the crime, a disparaging remark against one attorney would most likely be held against the conduct of the entire defense, regardless of which attorney technically was the object of the ridicule of the Court. Certainly, the effect of the Judge's remark had to have spilled over against the appellant, Ciro Riccardi, and it seems that such conduct was unnecessary, unsolicited, and must have created the impression in the jury's mind that the defendants were merely trying to set up smoke screens so that their cross examination was not worth giving substance to.

POINT III

THE EVIDENCE BELOW WAS INSUFFICIENT

It seems reasonable to conclude that the case below was quite close, especially in view of the fact that the jury acquitted the defendants of the crime of making an extortionate loan, pursuant to 18 U.S.C., Section 892. It would seem fair to assume that in view of the jury's action that they did not place much credence in the testimony of Frank DiPalma, the main witness, and the man who allegedly was the recipient of the extortionate loan as well as the victim of the extortionate threats. Mr. DiPalma's testimony was replete with lies and he was continuously discredited by both attorneys on cross

examination. He continuously maintained that he was not a bookmaker of any substance and never took bets on sporting events or numbers, (63 A), but other witnesses testified that they had placed such bets with him and had seen him engage in that activity to a considerable extent. (87 A, 88A-89A, 91A-92A) DiPalma said that he told Agent Ruffels that he had been a bookmaker, but Ruffels testified that he found that fact out from the records of the Eastern District Strike Force. (33 A) The record shows that DiPalma made many loans from banks and other financial institutions, apparently lying about the purpose of those loans, and that it was obvious he never intended to repay any of them. In fact, the record clearly shows that all of these loans were really used for gambling purposes and his lack of intention to repay them is evidenced by the fact that he ultimately filed a petition for bankruptcy and, in fact, none of the institutions ever got their money back. (69 A - 70 A)

The incident where appellant, Riccardi, allegedly punched DiPalma in the street also leaves a great deal to be desired, since DiPalma's wife could not verify that appellant ever struck her husband. (86 A) He never told the agent about the alleged incident that occurred in front of the cemetery, at a time beyond that alleged in the indictment, when Riccardi allegedly threatened him if he did not make repayments. This never appeared in any governmental report, even though the agent admitted that he interviewed DiPalma only three days after the incident took place. (34 A) There was even some disparity between the conversations on the tape recording with regard to whether it was the

to solicit threats from the appellant or whether this occurred strictly as a matter of chance. Agent Ruffels admitted on cross examination that he told DiPalma that a "threat would help" (36 A), but DiPalma testified that the agent never suggested any such thing. (65 A)

It seems to appellant that this Court should listen to the actual tape recording that was introduced at the trial below, since the question of audibility or the intonations used when certain statements were made becomes all important. We have referred to but a few instances where the main witness' credibility was impeached, but a reading of the entire record leads one to the inescapable conclusion that the jury simply did not believe Mr. DiPalma, and that the manner in which he testified showed he was unworthy of belief. The transcript of the tape also shows that some of the statements, which in black and white appear more serious than they actually are, may not have been particularly important and may not have in actuality constituted threats as alleged in the indictment. For example, right at the outset it is clear that the appellant searched DiPalma, obviously to see if he had a weapon, conduct which was confirmed by the F.B.I. agent who viewed that occurrence. (38 A) In fact, the agent said that there was no sign of any threats, shouting, weapons or other signs of violence during the time that Riccardi conversed with DiPalma. (37 A) The conversations seem to be in actuality much less than the government urged at the trial, since Riccardi continuously told DiPalma that he was not out to hurt him, that no one would hurt him, and in fact, throughout the tape Riccardi continuously offers to accept any amount

of money in payment of the debt that DiPalma could afford. It certainly seems that in view of the extraordinary length of sentence imposed upon Riccardi that the evidence here is not strong enough to convict beyond a reasonable doubt.

CONCLUSION

THE JUDGMENT SHOULD BE REVERSED AND A NEW TRIAL ORDERED.

Dated: Brooklyn, New York
October 20, 1975

Respectfully submitted,

PREMINGER, MEYER & LIGHT
Attorneys for Appellant
66 Court Street
Brooklyn, New York 11201

STANLEY M. MEYER
Of Counsel

APPENDIX

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CKEI

73CR1067
FLATT,

~~_____~~, 1A

ATTORNEYS

For U.S.:

CLOSED

For Defendant:

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

DATE _____

NAME _____

RECEIVED

DISBURSED

10,000.00

8-2472

Notice of appeal (Recast)

57

Clerk,

R-39-73

Notes of A. and G. Latta

5-

Marshal,

9-275

Paul to Treas.

--	--

Attorney,

Commissioner's Court,

Witnesses,

DATE _____

PROCEEDINGS

6/7/73	Bench Warrants issued as to two defts.
--------	--

6/8/73	By CATOGGION, MAG. - Order for Acceptance of Cash Bail filed (RICCAIRDI)
--------	--

6-8-73 Before CATOGGIO, Mag- Defts. and counsel Albert Aronne, present. Defts. entered a plea of not guilty - Reading of indictment waived by defts. - Bail set at \$10,000 -10% cash for deft. RICCARDI and \$2,500 P.R.B. for de GIGLIOTTI.

PROCEEDINGS

- 5/73 Magistrate's file 73 M 855 inserted into CR file.
- 7/73 Notice of Motion filed (ret. Aug. 7, 1973), with Memorandum of Law for Bill of particulars, Discovery, and directing the Govt. to produce and deliver to the defts. all evidence favorable to them etc. (Both Defts)
- 73 Before COSTANTINO J - Defts & counsels present - motion for Discovery and Inspection argued - stipulation agreed to and entered into the record.
- 7/73 Bill of Particulars filed.
- 2-73 Before Costantino J - Case called - defts & atty present - defts waive 6 months rule - set down for trial Jan. 21, 1974.
- 5-73 Notice of readiness for trial filed
- 5-74 Before COSTANTINO J - case called - defts & attys present - adjd to Mar. 25, 1974 for trial.
- 5-74 Before COSTANTINO, J. - Case called - Defts and counsels ^{not} present - Case adjd to 3-29-74 for report
- 74 Before COSTANTINO, J. - Case called - Defts and counsels present - Adj'd to 6-24-74 for trial
- 74 Before PLATT, J. - Case called - Adj'd to 6-14-74 at 10:00 A.M.
- 7-74 Before PLATT, J. - Case called - Defts and counsel present - Hearing adj'd to 7-12-74 at 3:30 P.M. - Set down for trial on 8-26-74 at 10:00 A.M.
- 74 Govts Memorandum of Law filed.
- 74 Before PLATT, J - case called - adj'd to July 26, 1974 at 3:00 PM.
- 74 Before PLATT, J. - Case called - Motion withdrawn
- 74 Before Platt, J case called for trial - adj'd to Oct. 15, 1974.
- 11-74 Before PLATT, J - case called - ready & passed.
- 1-75 Before Platt, J - case called - adj'd to 3-31-75 at 10:00 am (for trial)
- 75 Before PLATT, J - case called - Cert. of Engagment issued to James LaRossa and Gustave Newman - adj'd to May 20, 1975.
- By PLATT, J. - Memorandum filed denying defts motion to dismiss
- 75 Before PLATT, J - case called - trial ordered & BEGUN - Jurors selected and sworn - trial contd to May 20, 1975
- 7-75 Before PLATT, J - case called - trial resumed - Trial contd to May 21, 1975.
- 75 Before PLATT, J - case called - trial resumed - trial contd to May 22, 1975.
- 2-75 Before PLATT, J - case called - trial resumed - trial contd to May 27, 1975.

DATE	PROCEEDINGS
5/27/75	Before PLATT, J.- Case called- Defts and counsel present-Trial resume Deft Riccardi's motion for judgment of acquittal on counts 1 and 2 motion denied- deft Gigliotti's motion to dismiss count 1-decision reserved-deft's motion to dismiss count 2 motion denied-Trial contd to 5/28/75
5-28-75	Before PLATT, J - case called - trial resumed - Jury retires to deliberate - trial contd to May 29, 1975.
5-28-75	By PLATT, J - Order of sustenance filed (14 persons-Luncheon)
5-29-75	Before PLATT, J - case called - defts present with counsels - trial resumed - Jury returns with a verdict of guilty on count 2 as to both defts - Deft Gigliotti moves to dismiss count 2 - decision reserved - Jury discharged - bail contd as to deft Riccardi deft Gigliotti's bail increased to \$10,000, 10% cash - trial concluded.
6/2/75	Stenographers Transcripts dated 5/20/75(2), 5/21/75 5/22/75 and 5/27/75 filed
6-4-75	By CATOGGIO, Magistrate - Order for acceptance of cash bail filed (GIGLIOTTI)
7-18-75	Before PLATT, J - case called - sentnce adjd to 8-19-75 (RICCARDI) and GIGLIOTTI.
8/29/75	Notice of Appeal filed (for R. Gigliotti)
8/29/75	Copy of Notice of Appeal and duplicate of the docket sheets mailed to the C. of A.
8/29/75	Notice of Appeal filed (C. Riccardi)
8/29/75	Copy of Notice of Appeal and duplicate of the docket sheets mailed to the C. of A.
8/29/75	Before PLATT, J.- Case called- Defts and counsel present-Deft GIGLIOTTI sentenced for a period of 8 years pursuant to T-18, U.S.C. Sec. 4208(a) and fined \$10,000.00- Bail contd pending appeal-execution of payment of fine stayed to 9/12/75-deft RICCARDI sentence for a period of 20 years- i.e., the maximum fixed by statute, and for a psychiatric study as described in T-18, U.S.C. Sec. 4208(c), the results of such study to be furnished this Court within 3 months, unless Court grants further time not exceed 3 months, whereupon the deft shall be returned to this court and sentence of imprisonment shall be subject to modification pursuant to T-18, U.S.C. Sec. 4208(b)- bail contd pending appeal
8/29/75	Judgment and Commitment filed- certified copies to Marshal (BOTH DEFTS)

UNITED STATES OF AMERICA

-v-

CIRO R. RICCARDI
RONALD GIGLIOPPI

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUN 6 1973 ★

INDICTMENT
18 U.S.C. 892, 894

JA

TIME A.M. _____
P.M. _____

Defendants

-----x
THE GRAND JURY CHARGES:

COUNT ONE

73 CR 556

That on or about and between May 1, 1971 and May 18, 1972, both dates being approximate and inclusive within the Eastern District of New York, the defendant CIRO R. RICCARDI knowingly did make extortionate extensions of credit to Frank Di Palma in the total amount of approximately \$3,500, CIRO R. Riccardi and Frank Di Palma understanding, at the time said extension of credit was made, that delay in making and failure to make repayment of the same could result in the use of violence and other criminal means to cause harm to the person of Frank Di Palma.

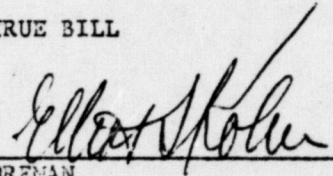
(Title 18, United States Code, Section 892)

COUNT TWO

That on or about and between May 1, 1971, and May 18, 1972, both dates being approximate and inclusive within the Eastern District of New York, the defendants CIRO R. RICCARDI and RONALD GIGLIOPPI knowingly used extortionate means within the meaning of Section 891(7) of Title 18, United States Code, to attempt to collect and to collect from Frank Di Palma, a debtor, an extension of credit, to wit; the defendants CIRO R. RICCARDI and RONALD GIGLIOPPI used violence and expressly and implicitly threatened the use of violence and other criminal means to cause harm to the person of the said debtor.

(Title 18, United States Code, Section 894)

A TRUE BILL


FOREMAN


ROBERT A. MORSE

United States Attorney

Below is a partial verbatim conversation which ensued between FRANK DI PALMA, "ZERO" RICCARDI, and RONALD GIGLIOTTI, on June 2, 1972, at Brooklyn, New York:

FD: FRANK DI PALMA
Z: "ZERO"
RG: RONALD GIGLIOTTI
UN: Unintelligible

RG: What have you got - a tire under there? All right, wait a minute - I'll take you (UN) let me get my car.

FD: Why? Where do we have to go?

RG: About ten feet, about four or five blocks away - he's talking to somebody.

FD: Can't you bring him here? Cause I don't want to go riding around. I got my car broke down and everything.

RG: I'll drop you back off over here - I'll drop you back off.

FD: I don't want to

RG: (UN) He's busy - otherwise - he's busy with somebody.

FD: If he's dizzy tell him he might understand what the story is.

RG: Talking to you is like talking to nobody. I just - I hang out here - about four or five blocks away.

FD: OK. Cant' you tell him to come down here?

RG: He's busy - he's talking to somebody, with somebody.

FD: (UN) When's he going to come back here?

RG: He didn't say. He just said "I'll drop you off - wait here". You got a car, I'll go with you - I don't care.

FD: My car is un - broke down - my wife and my kid is sick - I have no car; I've got absolutely nothing, nothing, not a car nothing (UN).

RG: Alright what do you want me to (UN) I don't give a shit. I'll just tell him you can't make it.

FD: Where is this place, do you know?

RG: (UN) It's about 4 or 5 blocks up here - they were talking about something and that's why he told me to wait here.

FD: I don't want to go anywhere.

RG: Listen - We're not going to no house, there's no house, he's waiting for you outside. I don't give a fuck. It don't make no difference to me. I'll tell him you can't make it.

FD: I'm here - I don't want to travel over there. Can't you tell him I'm here? It's only right that - that if I had the money he would have met me here.

RG: If you had the money I would have taken it. That's how much he wants to see you.

FD: He's going to want to know why I can't pay him.

RG: That's your problem, right?

FD: I don't want any uh repercussions.

RG: I don't think you'll get any repercussions, there's no reason for repercussions.

FD: I don't want any repercussions Sunday - I don't want to.

RG: I tell you - I'll take you there if you want. There shouldn't be any problem.

FD: (UN) how you get down there?

RG: About 5 or 6 blocks.

FD: (UN) I'll walk down.

RG: You tell me what you want to do. If you don't want to go over there, I'll just call. Say you can't make it.

FD: What are you going to go inside somebody's house or outside the house.

RG: Outside.

FD: Outside of the house? Which way - that way or do I have to go toward the barn.

RG: About uh, about 3 or 4 blocks up and about 2 blocks up that way.

FD: I'll walk up.

RG: Alright, let's see, you want to walk it? I'll tell you which way to go.

FD: Yea, you show me the street, I know how to go.

RG: It's past - you know - uh - you know where you work.

FD: Yea.

RG: Alright - it's - your coming back up this way - there's Browns - you know where Brown's is, right? Straight down Browns 3 blocks - 2 or 3 blocks.

FD: Down this street by Avenue "X".

RG: No, no, you, you, you know where Browns is - the furniture store?

FD: Browns - yea.

RG: Right - on that street 2 blocks up.

FD: Up this way.

RG: Right up that way.

FD: So that would be uh past what?

RG: Probably Striker Street or uh Striker. I know it's on the street from Browns - you walk two or three blocks up - I'll go there I'll be outside - you'll see me standing.

FD: I'll start walking up.

RG: All right.

9A

FD: I'll walk up this way. Straight up till I get to Browns. Make a right turn.

RG: You know where Browns is now. You know where Browns is?

FD: It's the uh furniture store there.

RG: Yea. It's a big furniture store. You know where Neils is?

FD: Yea.

RG: Where the delicatessen is?

FD: Oh! Past, past the "L".

RG: That's what I'm telling you. It's on the other side of the "L".

FD: Oh. It's on past the "L" past the "L" yeah, all right. I'll start walking up that way.

RG: All right.

FD: He'll meet me outside by Neils.

RG: He will - he'll meet you wherever you want.

FD: Tell him to meet me outside of -

RG: I'll have to go get him - I'll have to go get him - you knw he's bullshitting with some guy so -

FD: That's what I mean. (UN) You can save me the trouble - it's the same thing. Can't he come down here? Gee whiz, it's the same thing as me walking up there.

RG: Go ahead - start walking down that way - walk down that way - he'll catch up with you.

FD: Walk towards the "L" down there.

(Pause while walking from the luncheonette to Neils Deli)

(FBI radio interference)

Z: How long have you been speaking to him? You want to be a cocksucker. You got my money?

FD: (UN) I got a wife - everybody else is gotta -

Z: Where's my money?

FD: What does it pay to hit? You don't hit somebody.

Z: Where's my money? You want to start in again?

FD: Because I'm trying to explain to you - I don't even have fucking job - what are you doing (Zero conduct body search). Yea, I'm loaded -

Z: I'm not looking for a gun (UN). I'm not going to hurt you - that means something got to be done - Patty - Frank, I'm telling you - sit down and read the score; let's get off the street now.

FD: How am I going to pay? That's it, to tell you the truth I ain't got it - I tried my best. I went to my sister-in-law. She can't give me no money. I don't got no pay out of here. I can't even get it. I ain't been working. I ain't got any money. That's the truth and the whole truth. I ain't got it.

Z: What am I supposed to tell these people?

FD: It ain't my fault, I don't have any fucking money. I got strapped up.

Z: It is your fault, remember how you came to me and begged me for the money every time you came. Frank, I am telling you now, you gotta pay the money.

FD: How am I going to pay?

Z: I don't know what to tell you - you got to pay. I was a nice guy with you. I can't be a nice guy with you, I gotta be a cocksucker with you. I ain't gonna be no easy guy with you.

FD: Oh I ain't gonna get hurt. Seriously boy - I took one and that's enough.

Z: You took one, you think you're right? You think you're right?

FD: I'm never gonna get hit again.

Z: You're think you're right?

11A

FD: I ain't want to get hit again.

Z: You think your right.

FD: And then my family's got problems.

Z: Well you knew that.

FD: (UN) I told you like a man I was in trouble, I told you like I'm a man that I was broke. I told you like a man I couldn't afford it after I told you to make some kind of arrangement for me - and I told you what happened - I told you exactly what happened.

Z: Ronnie, you stand right next to him - if he does anything shoot him right in his fucken head - I'm telling you something over here - if you'd have come to me like a man and you wouldn't try to hide like a rat -

FD: I wasn't hiding.

Z: Well why didn't you come.

FD: The last two - the last two weeks I wasn't hiding - I wasn't hiding the last two weeks.

Z: Well, where were you? Why didn't you come and see me?

FD: The last two weeks I -

Z: Well, where were you?

FD: The last two weeks I was trying to get money - I've been looking all over the place to borrow money. As a matter of fact you're right. I got the books but I can't even pay - I'm behind two months on every fucken book I got - because I can't afford it anymore - I ain't got no goddamn money.

Z: You gotta pay - this is something that's out of my hands - you gotta pay - you gotta pay - uh - I'll tell like a man if you should a come - instead of hiding for three weeks - come see me - you had a come take money off me didn't you? Huh? Didn't you know how to come and take money off me? Ha - look did you come and take money off me. Huh?

FD: Yea - but meanwhile I paid you.

Z: But didn't you know how to come and take

FD: But meanwhile I paid you.

Z: Frank, I did take it into consideration but (UN)

FD: I even borrowed off Patty and Patty gave me money like that and I even tried staying.

Z: Patty's going to be held responsible for a thousand dollars - I don't want to know nothing.

FD: Why should Patty be responsible?

Z: He came and vouched for you. He's being held for a thousand dollars. I don't want to know nothing.

FD: Yea - but I gave you two and a half thousand.

Z: Let me tell you something right now - 3500 was the agreement and you - you know just what it was right? Let me tell you something now - I tried to make - uh - uh - reasonable thing with you, and uh 2500 and uh - uh - whatever you wanted to do and if you could afford 175 - 150 - 100 - um - whatever you said - whatever you said - the price you said I went along with you - didn't I do that for you? What more - in other words you want to tie Cisco's money up for a year and then you look to pay them their money back and then you don't want to pay them what they've got coming. What do you think these people are made with a finger. Frank, I'm talking to you like a man - here Frank, take a walk - am I right or wrong? Think of it, be reasonable, be a reasonable person - if you knew you couldn't pay this money, why did you take it?

FD: Yea - well I took the money and I was paying it right? Wait -

Z: One thing don't have to do with another - now you tell me what you want me to tell these people - What do you want me to tell them? You tell me what you want me to tell the, and I'll tell them.

FD: What could I tell you.

Z: I'm asking you, you're the guy who owes all the money.

FD: I don't know what to tell you. I don't know what to tell you - I'm tired of trying to get money that's all I can tell you - what can I tell you? I'm trying.

Z: You're not trying - why aren't you working?

FD: I know I'm not because I can't even afford to pay my own bills.

Z: That's why you're not working.

FD: I haven't got no money.

Z: That's why you're not working. Couldn't it be a good idea to work.

FD: I been trying to work - I been trying to make money. I had a rough time. I went to my sister-in-law with my wife - she doesn't have it - she might have had it then but she doesn't have it now.

Z: How did you get there?

FD: I walked here - I got a pass from the subway - they don't take my passes away - I took the subway and that's it - I got a car - my wife's holding it, my car.

Z: You're afraid to get in a car - You're afraid to get - let me explain something to you. If anything we'll come and get you in the street, that don't mean shit to get in a car - don't be stupid Frank - nobody's looking to do nothing to you - you don't understand this - you gotta know how to talk like a man, you're not a man Frank - you're not a man at all - Nobody is looking to do nothing to you - nobody is gonna hurt you - not like over here you took this man - now - where have you - you took this, you wanted to give him the money or the house.

FD: I don't have a house - I was bullshitting.

Z: You want to pay \$6,000 Frank? You ^{like} ~~liked~~ to somebody, in other, in other words now you want to go in for 6,000 more in other words.

RG: The way you speak you're better off dead, I'm telling now -

Z: I'll tell you right now, you're better off dead - you don't think so.

FD: What about my wife.

RG: Well, you know we're not very interested in anyone else's kids no more - who the fuck are you to swing a deal - you ain't a swinger. You shouldn't that house.

FD: I looked all over for three weeks.

RG: Suppose he would have you the money - you know. You know he's held responsible for that fucking money - you - you - owe him - now you ain't worried about his wife and kids.

FD: (UN)

RG: How could you be worried about it - why didn't you pay him?

FD: I paid him every three weeks - it was like clock work it was like clock work, every week I was-

RG: Yea - but even with that money, you didn't go for 6,000 more -

FD: No - I didn't ask for 6,000.

Z: He's a big man - a big man - don't you understand. You're wrong Frank. You gotta pay - I don't know what to tell you.

FD: I don't know what you want me to do?

Z: Whatever you can do, you do, you got to. You know what I'm saying here, over here gotta be reasonable. I took into consideration for you so many times, you walked out on me, that's the trouble. I mean I should have been a cocksucker with you to fucking force you. You'll have to get a thousand more off Patty anyway. Where's he now?

RG: You'll owe him \$1,000 more then you'll owe Patty a \$1,000. I don't give a fuck where he got to get but he got to get it too.

FD: Patty - Patty's not involved in this.

Z: What was his word when you took the first thousand dollars, what was his words then. 100 percent - the guy is good. I stand by the guy.

FD: No - don't bother Patty.

RG: No good. Then you come up with money -

Z: Don't bother Patty - he's got to be held - well then you come up with the money (UN) what do you think this is \$5 - this is big money big money - you think this money grows on trees? Frank, I understand you're in a jam - you don't hide. You don't go in the house and don't go out and make your wife to tell people that you're not home.

FD: I wasn't home. I wasn't home.

Z: You weren't home for two weeks?

FD: No - I was by my cousin's house trying to make money.

Z: Frank, let me tell you something. No use running away. How did you come up with that phony check? How did you get that phony check?

RG: That check would have bounced.

FD: (UN) I didn't give you the check - I was going to show it to you.

Z: No - no - no, take the check (UN)

FD: (UN) Because I thought for sure they were going to give me a hand.

Z: Be a fucken man and don't lie to me - be a man and don't lie - because you're a fucken liar - I catch you in too many fucking lies already - be a fucken man - people be a man with you if you fucken don't do like that. Don't be a cocksucker cause it don't pay - I'm telling you now.

FD: How much could I pay. In other words you can't afford \$50 a week, right? I'm just asking - how much could you pay back?

Z: I'm gonna go take a thousand off Patty - you gotta pay. Frank you gotta pay.

FD: Then what happens?

Z: You're going to have to owe me money.

Z: What could you afford a week?

FD: I don't know - I didn't get paid yet, I didn't get no pay.

Z: I didn't want to get fucked, you gotta be a man, you gotta be calm - to treat you calm you gotta show good faith, you can't hide, the worst thing in the world - and you want to be a tough guy on top of it - you gotta pay (UN).

FD: What about Patty, I like Patty a lot -
(car radio transmission)

FD: Patty - what - what can you do to uh get out of them before going to Patty.
(radio transmission)

Z: Well, Patty's gotta be held responsible for a thousand anyway -

FD: Yea, but I want to find out.

?: (UN)

Z: You don't want to go for a ride - as far as you're concerned, you didn't do nothing wrong - as far as you're concerned you didn't do nothing wrong - what have you got to be afraid of, right?

FD: I've got something to be afraid of.

Z: Oh. Well then in your conscience you must have done something wrong.

FD: (UN)

Z: Didn't you come begging for money. You forgot - think back - Am I right or wrong? Think back, remember how you used to come.

FD: What do we want to do to resolve this thing with Patty?

17A

Z: I'm going to see Patty - I don't want to hear anymore - I don't even want to see you again. You gotta pay me my money. You gotta think what you want to do - I don't want to know nothing. Friends gotta be paid - Patty's held responsible for a thousand dollars. I gave him until Friday - you were supposed to - you told Patty you were going to come up with 2,500 and you didn't - you didn't tell Patty that.

FD: I told him that my wife's sister had it.

Z: Now, I gotta see Patty for a thousand, that's like a thousand back he's gotta pay the money

FD: What do I owe -

Z: Let's come to a settlement here. I told you your balance already - 2,500 - I'll take a thousand off Patty and then you'll owe me 1,500.

FD: Then all you gotta get is 1,500.

Z: You'll have to pay me every week. I heard Patty was doing pretty good. I head you and him were partners.

FD: Yea, I wish I was Patty's partner whatever he did, he did on his own. I owe the Bankers Trust - I owe fucken National City Trust.

Z: What happened to your money?

FD: Gambling at the race tracks - trying to make up money that I don't even have.

Z: What could you afford a week?

FD: I don't know.

Z: What could you afford a week? I'm asking you now.

FD: \$15 a week - huh.

Z: Make it 25.

FD: What happens one week when I don't have the money?

18A

Z: You don't got it, come. You come whether you got it or not, you tell me. Don't go hide like a fucker - be a man - you got two kids over here - be a fucken man - how you gonna show your kids a way - bring your kids up - Frank, I don't think you understand you can't go borrow money from people and never expect to pay them. You know what I'm saying? I that - what could you afford, 25 a week?

FD: I'll try, I just want to get credit for a couple of weeks that's all. (UN)

Z: I want to tell you now - come up with 20-25 a week until you get on your feet - when you get on your feet, then you'll tell me, you'll see what you can pay. That being fair?

FD: Yea.

Z: I don't want to see you get hurt. I don't want to see no contact.

Z: What's the matter Frank - heart attack maybe? Take a lesson you pay - when are you going back to work? You can't go back because you owe all kinds of money in there too. What do you tend to do? How - how - how the hell you gonna - how you gonna square your debts?

FD: What's wrong?

Z: You don't know - you don't care then - in other words - don't tell me you aren't better off dead - because what about your wife and kids -

RG: What fucking good is your life (UN).

FD: (UN) if I could just hang in.

RG: (UN) you got a car? Why don't you drive for a car service?

FD: (UN)

Z: What are you gonna do?

FD: I'm going to start pay you back - um - I'll see ya when - Monday?

Z: (UN)

FD: (UN) I don't know what you want me to do - I don't know what to say - I didn't go to work - what I'm gonna get

FD: over there, I don't know if I'm gonna have my job there or not.

Z: Why don't you go in now? Why not?

FD: I can't, I can't work nights.

Z: Why, why don't you want to go into your job? Are you afraid to go in? Why are you afraid to go in?

FD: I owe too much fucken money.

Z: You keep putting it higher and higher is that right? (UN)

FD: (UN) that kind of money in there - the money I owe out in there is like \$20 to all my good friends - \$20.

Z: And you owe out 1,700 to another guy and you owe out 2,000 to another guy and you owe like 700 to another guy like four you hear that?

FD: That ain't true - (UN) there isn't one in there that has \$5.

Z: Let me tell you something - go in there like a man (UN) sit down with everybody you owe money to and settle up. Say - look if I don't work I ain't gonna get paid - I'm gonna come to work - sooner or later - wouldn't that be better then do what you're doing?

FD: Yea.

Z: (UN) want me to come there and be with you - huh - (UN) well, what else can I tell you? You don't earn you ain't gonna make no money - you ain't gonna put no food on the table - how you feedin your kids?

FD: (UN)

Z: You mean to tell me if this is not the position your in there ain't nobody to help you out?

FD: (UN)

Z: (UN) they don't want to help?

Z: (UN) Can't you see the kind of guy he is - see (UN) what kind of guy he is?

FD: I don't have the type of family you can go after money with other words - (UN)

Z: Big man. Multimillionaire. What is your uncle - (UN).

FD: (UN) - that's not my uncle (UN) I'm the one
(UN) - All I know is that I can get \$20 to \$25 a week - right? Friday - three o'clock - right. We'll meet by then.

Z: You pay up uh - I gotta go see Patty now.

FD: (UN)

Z: You gotta (UN).

FD: Friday.

Z: Got to work. Start going to work. Don't start telling me lies that the worst thing in the world you can do - you hear what I'm telling you? Be a man and act like a man and you get treated like a man be a cocksucker and you get treated like a cocksucker (UN) take you two fucken years - try to work at that until you can get on your feet this guy

RG: He's the type of guy that if he gets on his feet still won't give you no money - that type and guy you know what I mean?

Z: Don't tell me your not doing the right thing. (UN).

RG: You gotta - Frank you have to understand one thing. I thing you know about it. You know he's responsible for a lot of money. That he's - that you've got. That you (UN) you understand. What's he supposed to do. He's gotta go make the money so that he can let you off the hook and you gonna take two years to pay him - you understand.

FD: I never uh I always thought it was just his money.

RG: Oh now it's just like uh you think, it's his money that's why you don't have to pay, that what you think.

FD: No. That's not what I said. Your saying. I'm not saying. That - I'm just saying something else (UN).

RG: You always thought it was his money.

FD: I thought.

RG: You got some fucken trick.

FD: I thought this money in a way that that (UN). In other words you gotta pay somebody else - is that right.

Z: That's right. What do I tell these people. Give them your address. I that what I tell them. You gotta you gotta phone you don't want to give me your phone number. You're lookin to die.

FD: It ain't that - I don't want my wife to be picking up the damn phone and gettin calls. People call her and everything - uh- and all that. That's too much. It's too much pressure see it isn't his fault. My wife shouldn't be stuck with it - in other words -

Z: In other words I gotta suffer - my wife is gotta suffer for it. My wife and kids gotta suffer, right? You dirty cocksucker. My wife and kids are going to suffer right? Long as you, you don't suffer, right.

FD: I didn't say that - you asked about my phone number - the reason why because I didn't wasn't to uh be bothered with uh.

Z: Your lucky your dealing with me. Your lucky your dealing with me. You know what I do now. Gonna be a cocksucker. I going to wash my hands of the whole matter (UN) go ahead I don't know what to tell you Frank.

FD: Oh. I want to explain one thing about my phone.

Z: This money is coming out of my mouth. Don't forget it. Coming out of my mouth. To let you off the hook. (UN). You (UN) cocksucker (UN) be here Friday (UN).

1 A78 THE COURT: That's all right. I think we better
2 move along to 1:00 o'clock. It is a more equally
3 divided time in the day if we do it that way.

4 MR. NAFTALIS: I was trying to do it for the
5 Court's convenience.

6 (End of side bar.)

7 MR. NAFTALIS: The Government calls
8 Arthur Ruffels.

9 A R T H U R R U F F E L S, called as a witness
10 after having been first duly sworn, takes the witness
11 stand and testifies as follows:

12 DIRECT EXAMINATION

13 BY MR. NAFTALIS:

14 Q Mr. Ruffels, by whom are you employed?

15 A Federal Bureau of Investigation.

16 Q How long have you been thus employed?

17 A Approximately five years.

18 Q What is your official rank?

19 A Special agent.

20 Q Was that your rank and employment in May of
21 1972?

22 A Yes, sir, it was.

23 Q What was your assignment in May of 1972?

24 A I'm assigned to the organized crime division.

25 MR. LA ROSSA: Objection.

A79

Ruffels - direct

MR. NEWMAN: Objection.

THE COURT: He is entitled to give his assignment and his duties.

MR. LA ROSSA: Well, you will not my objection to the answer.

MR. NEWMAN: Mine also.

THE COURT: Come up here, gentlemen.

(The following took place at the side bar.)

MR. LA ROSSA: Did your Honor hear the beginning of the answer?

THE COURT: What's wrong with that?

MR. LA ROSSA: He is assigned to investigate organized crime.

THE COURT: Well, that's his function.

MR. LA ROSSA: So he's making a determination that this is an organized crime case.

THE COURT: That's not the witness. That's his function. This is his function.

MR. LA ROSSA: Your Honor, you will note that I move for the withdrawal of a juror based on that answer. Whether or not they believe my client is a member of organized crime or not --

THE COURT: It doesn't make any difference. It is not a question -- I will caution the jury that

A80

Ruffels - direct

1 this man is assigned one duty or another. It doesn't
2 mean anything. But he is entitled to give his
3 background and his function and duty. That doesn't
4 have any bearing on whether your client did or didn't
5 do something.
6

7 MR. LA ROSSA: His function is that he is a
8 special agent of the FBI.

9 THE COURT: He is assigned to a particular
10 division of the FBI.

11 MR. LA ROSSA: If he is assigned to the
12 Joe Columbo family, may that be brought out to the
13 jury at all.

14 MR. NAFTALIS: That's --

15 THE COURT: He hasn't so testified.

16 MR. LA ROSSA: I most respectfully submit that
17 it is the same thing.

18 THE COURT: Well, you know, you're stretching
19 it to the limits. A fellow can't even testify that
20 he works for the FBI. The FBI investigates crimes.
21 It is the same type of logic or analysis. The fact
22 that he is in the FBI or the New York City Police
23 Department, he investigates crime.

24 MR. LA ROSSA: Yes, sir, except that organized
25 crime is a classification that the jury well knows

A81

Ruffels - direct

or what that means.

THE COURT: What does it mean? I don't know what it means.

MR. NEWMAN: That's part of the problem. Just discussing that --

MR. LA ROSSA: Organized crime has been described by the Attorney General of the United States on many instances and in news reports and conferences and as is commonly called, the Mafia or --

THE COURT: Oh, I don't think it means that at all. I will caution the jury.

MR. NEWMAN: I join in the objection as to the use of the word organized crime.

MR. NAFTALIS: Can he finish the --

THE COURT: Don't pursue this.

(End of side bar.)

THE COURT: Ladies and gentlemen, the fact that this witness may be assigned to one unit or another of the FBI is not material to your consideration of this case. I permitted him to answer the question and I see no harm in his answer as such. He is a member of the FBI. And various members of the FBI are assigned to one unit or the other. But that isn't the question for your determination.

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Ruffels - direct

A82

Your function is to determine whether or not a crime had been proved in this particular case and whether that crime was committed by these defendants. And not to what division this witness may or may not have been assigned at a particular time.

All right, you may proceed.

MR. NAFTALIS: Thank you, your Honor.

Q Mr. Ruffels, in what city were you assigned in May of 1972?

A New York.

Q I take it, your assignment would entail activities in all five of the boroughs?

A That's correct.

Q Mr. Ruffels, were you employed by the FBI, working for the FBI on May 18 of 1972?

A Yes, sir, I was.

Q And May 19 as well?

A Yes, sir.

Q All right. During your -- I draw your attention to May 18 of 1972. Did you --

MR. NEWMAN: What date was that? I am sorry.

MR. NAFTALIS: May 18.

MR. NEWMAN: Thank you.

MR. NAFTALIS: Of 1972.

AVE X
HMB

1800-2000
317

1800-2000

5000-

27A

DiPalma-direct

2 A I owed National City Bank-- First National
3 City Bank, Chase Manhattan Bank, Household Finance,
4 Beneficial Finance, Commercial Credit Union, Bankers Trust,
5 a few odds and ends, plus I owed my relatives money, and
6 mother, father, my aunt and uncle, my sister-in-law,
7 brother-in-law.

8 Q Mr. DiPalma, what if anything did you do with
9 the money that you had received from those various banks
10 and people that you just named?

11 A With that, plus with my gambling, I used to
12 give whatever I could get up to pay the vig during the week
13 and use it for gambling.

14 Q How did you go about this gambling?

15 A I'd bet horses, baseball, football, any sport.
16 I was a degenerate gambler. That's what I was.

17 Q Would you explain to the Court and to the
18 members of the jury what you mean by the term "degenerate
19 gambler"?

20 A It's a person who just likes to go--likes to
21 gamble; a person that doesn't care about the people that
22 love him, a person that just doesn't give a damn, as long
23 as--he's happy gambling, that's it. It may be horses, it
24 may be anything, gambling on anything.

25 Q What were you gambling on at the time?

DiPalma-direct

1
2 A Mostly on horses and sports.

3 Q Where were you placing these bets?

4 A With bookies.

5 Q Mr. DiPalma, you've testified as to a
6 rather long list--

7 MR. LA ROSSA: I object to the form of that
8 question.

9 THE COURT: I'll allow that. It's just a
10 summarization; it's not important. Go ahead.

11 MR. NAFTALIS: Thank you, your Honor.

12 Q Mr. DiPalma, you've testified to a rather
13 long list of institutions that you owed money to. Approxi-
14 mately how much do you believe you owed at that time?

15 A About \$12,000, \$13,000.

16 Q How much were you earning at your job?

17 A \$140 a week.

18 Q Is that take-home or gross?

19 A Take-home.

20 Q Approximately how much is that a year that
21 you were earning?

22 A Around \$9,000.

23 Q Mr. DiPalma, you testified that your vig
24 payments became \$175 a week?

25 A Yes.

DiPalma-direct

1
2 Q Mr. DiPalma, how long did you continue to
3 pay this \$175 a week?

4 MR. LA ROSSA: I object to the form of the
5 question

6 THE COURT: I'll allow it.

7 Q Mr. DiPalma?

8 A About four or five months.

9 Q You paid it for four or five months?

10 A Yes, sir.

11 Q Does that mean you paid it every week?

12 A I paid it every week, \$175.

13 Q Mr. DiPalma, did there come a time that
14 you could not make your vig payment?

15 MR. LA ROSSA: Objection to the form of the
16 question.

17 THE COURT: I'll sustain that.

18 Q Mr. DiPalma, did there come a time that you
19 could not pay Mr. Riccardi?

20 MR. LA ROSSA: Objection to the form of the
21 question.

22 THE COURT: Yes, I'll sustain the form.

23 Q Mr. DiPalma, you've testified that you paid
24 this for a couple of months?

25 A Yes.

DiPalma-direct

1

2

Q Continue, Mr. DiPalma, what happened next?

3

4

A From there I went back home, I went out to New Jersey where my mother lives, and I got the money from her.

5

6

Q What money is this, Mr. DiPalma?

7

MR. LA ROSSA: Objection.

8

A Money for--

9

THE COURT: I'll sustain it.

10

A (Continuing) --I went to Jersey--

11

THE COURT: No, I sustained it.

12

THE WITNESS: Sustained? I'm sorry.

13

Q What did you do with the money you got in

14

New Jersey?

15

MR. LA ROSSA: Objection.

16

THE COURT: I'll sustain it.

17

Q Mr. DiPalma, what happened next?

18

A Well, a week or two went by and I came over

19

and I met him on Avenue X again.

20

Q Who is "him"?

21

A Ciro. I met Ciro Riccardi on Avenue X.

22

Excuse me. Can I stop there and start all over again?

23

Q Sure.

24

A Prior to that I met-- I was ducking him for a

25

week. I was hiding for a week.

DiPalma-direct

1
2 Q Why were you hiding?

3 A I didn't have the 175.

4 MR. LA ROSSA: Objection.

5 THE COURT: I'll sustain it. Disregard it,
6 ladies and gentlemen.

7 Q Mr. DiPalma, what happened after you were
8 ducking him?

9 A I was driving on 85th Street, going home on
10 a Thursday night and a car stopped me on the corner of 16th
11 Avenue and 85th Street, pulled me over to a cemetery by the
12 johnny pump.

13 I got out of the car, which at the time was a
14 1966 Oldsmobile, walked over to a 1966 Lincoln, I believe.

15 Q Who, if anyone, was in that car?

16 A Ciro Riccardi, and that gentleman with the brown
17 suit there (indicating).

18 Q They were both in the car?

19 A That's right.

20 Q What if anything did you say, and what if
21 anything did they say?

22 A Well--

23 MR. NEWMAN: Might we know who said it?

24 I object to the use of "they," or "he."

25 THE COURT: You're sure it was the gentleman

DiPalma-direct

with the brown suit?

THE WITNESS: Yes.

THE COURT: Can you identify which particular gentleman said what?

THE WITNESS: Yes, I can.

THE COURT: All right.

A Ciro Riccardi asked me where have I been. I told him I'd been around. "I haven't had a chance to come down and see you yet."

He told me that if I don't get this money up he's going to put me in the hospital where no doctor bills are going to be able to pay for it.

Q What did you say then?

A I says, "Well, I'm having a hard time."

He says he's having a hard time, too, doesn't want to know about my hard times.

Q What if anything else did he say?

A When he said that, the gentleman there with the brown suit (indicating) said, "Look," in the words of this, he said, "It doesn't pay for you to get hurt." He said, "Why don't you pay him? or do what you can to pay him?" Then he says, "Go ahead and go."

I left that day, went back home.

Q What happened next, Mr. DiPalma?

1
2 Q Now, you have had an opportunity to review all
3 your reports in this case, haven't you, before you took the
4 witness stand?

5 A As well as I can recall, yes.

6 Q You certainly wrote them over the last few
7 days, haven't you? Did you read them before you took the
8 stand?

9 A Yes.

10 Q Do you see anything in those three reports
11 about Mr. DiPalma being a bookmaker?

12 A In my report?

13 Q Yes, your reports.

14 A No.

15 Q When for the first time did you find out he was
16 a bookmaker?

17 A At the Eastern District Strike Force --

18 Q When?

19 A (Continuing) Office.

20 THE COURT: He asked when.

21 Q When, sir?

22 A At the time of the indictment.

23 Q Did you make out a report? You, personally?

24 A No, I didn't.

25 Q That you found out that the man was a bookmaker?

1 115 Ruffels - cross/Newman

2 Q Now, you were in court yesterday, and you heard
3 him testify about a meeting that he said took place? He didn't
4 remember the date where he spoke to two people in an automobile;
5 and he testified that one of the persons was Mr. Gigliotti;
6 and you heard him say in words or substance that Mr. Gigliotti
7 said to him, "It doesn't pay for you to get hurt. Why don't
8 you pay him," or, "Do what you can to pay him."

9 And then he says, "Go ahead and go."

10 Is there any reference to that in that interview
11 report that he gave you on May 18th, three days after that
12 event?

13 A No, there isn't.

14 Q If there any reference to it in your 302 which
15 you prepared, your official FBI Report of Mr. Gigliotti, or
16 whoever the person was in the car, making any such statement?

17 A No, there isn't.

18 Q Now, between May 18th and today's date, how many
19 times would you say you have seen Mr. DiPalma?

20 A I would say ten or twelve times.

21 Q During those occasions, did you have occasion to
22 talk to him?

23 A Yes.

24 Q Did you file a 302 report for every one of the
25 times that you spoke to him?

35A

1 116

Ruffels - cross/Newman

2 A No, I did not.

3 Q Did you file them for any of the times that you
4 spoke to him in addition to the May 18th?

5 A Oh, yes.

6 Q In any of those other 302 reports, was there any
7 reference to the fact that Mr. Gigliotti was the second man in
8 that car, or he said what Mr. DiPalma said he said here in the
9 court yesterday?

10 A To the best of my recollection, no.

11 Q Now, in addition to that, sir, did you have occa-
12 sion to bring Mr. DiPalma to the Grand Jury on the three occa-
13 sions that he testified?

14 A I did not bring him to --

15 Q Were you present here at the Grand Jury when he
16 testified?

17 A On two of the occasions.

18 Q In the course of preparing for this case, did
19 you have occasion to read Mr. DiPalma's testimony before the
20 Grand Jury?

21 A No. I haven't read his testimony, per se.

22 Q As a matter of fact, looking again, if you would,
23 at Exhibit 6, the verbatim report, Exhibit 6 -- I am sorry.
24 That's the actual -- No, that's this, sir. Government Exhibit
25 6 for identification.

1
2 something threatening to you because it could be introduced
3 in Court against them."

4 A No. I did suggest to Mr. DiPalma that a threat
5 would -- would help.

6 Q Those are the words you used?

7 A Words to that effect.

8 Q Threat would help. Did you tell him that as
9 part of this crime, you had to prove a threat?

10 A I don't think -- I don't think I did. I don't
11 think I told him that. It's not -- we don't normally tell
12 everyone how we're proceeding with an investigation. I don't
13 think it's our common practice to tell everyone what we're
14 doing.

15 Q Did you tell him that a threat from each person
16 he met on that day would help? If there were more than one?

17 A Absolutely not.

18 Q Just Mr. Riccardi?

19 A Absolutely not.

20 Q Just Mr. Riccardi?

21 A I -- I would imagine that I suggested that if
22 Mr. Riccardi threatened him, it would probably help.

23 Q Agent Ruffels, didn't you suggest to him that he
24 should try to get Mr. Riccardi to threaten him because that
25

Ruffels-redirect

1
2 Q As Frank DiPalma proceeded down the street to
3 that meeting to Neal's Deli, did you have him under observa-
4 tion?

5 A Yes.

6 Q Could you see him?

7 A Yes.

8 Q During the time of his walking towards the
9 defendants, did you see him make any gestures in their direc-
10 tion?

11 A No.

12 Q Did you see him wave a fist?

13 A No.

14 Q Did you see him produce a weapon?

15 A No.

16 Q Did you hear him shout threats?

17 A No.

18 Q Did you observe, hear, see or in any way observe
19 any threatening motions from Frank DiPalma in the direction
20 of either of those two gentlemen?

21 A No.

22 Q In the direction of any other person?

23 A No. As a matter of fact, he was searched. They
24 searched him.

25 Q When you say, they, whom do you refer to?

Ruffels-redirect

1
2 A Ciro. Searched him for -- for what -- what
3 Frank --

4 MR. LA ROSSA: Objection.

5 THE COURT: Can't say what he searched him for.

6 A Okay. He searched him.

7 Q Was anyone else present when that search took
8 place?

9 A Ronald Gigliotta.

10 Q I just want to dwell for a moment, Special Agent
11 Ruffels, on your decision to shut the recording device off.
12 I ask --

13 MR. LA ROSSA: I object to the form of the ques-
14 tion.

15 THE COURT: He's giving a preliminary background,
16 Go ahead. Ask the question.

17 MR. NAFTALIS: Thank you, your Honor.

18 Q Special Agent Ruffels, you testified in respect
19 to Mr. LaRossa's cross-examination, you've been an agent
20 for some four years, is that correct?

21 A Four years and eight months.

22 Q Four years, eight months. Excuse me. Have you
23 had the opportunity to tape other conversations?

24 A Yes.

25 Q Were other conversations on body devices being

170

DiPalma - cross/LaRossa

A I did hear the recording, yes.

Q You didn't hear any of those comments, did you?

The comments you made in that machine to whoever was listening?
Did you hear them when you heard the tape again?

A I am not sure if I did.

Q Stop and think about it. It's very important.

A I'm not sure if I did. I'm not sure if I did.

Q But is there any question in your mind that you
did say things in that recording machine as you walked down
those streets?

A Yes. I told you I did. I mentioned locations.

Q You mentioned something about the gentleman on
the right?

A I might have.

Q Did you talk about anything else other than
locations or the gentleman on the right in that recording
machine? I am talking about the interval of time after you
left Avenue X until the time you met Mr. Riccardi?

A I don't remember. Honestly, I don't remember.

Q Mr. DiPalma, let's go back to the very first day
you were ever engaged as a bookmaker. And I know you can't
remember the date, the year, the month, or anything else. Did
you start being a bookmaker yourself?

A No.

40A

171

DiPalma - cross/LaRossa

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Q You had a partner?

3

A Yes.

4

Q Who was that?

5

MR. NAFTALIS: Your Honor, that's irrelevant.

6

THE COURT: Overruled.

7

Q Who was your partner?

8

A Your Honor, excuse me. Could I think this over?

9

I didn't have a partner.

10

THE COURT: Did you have a partner?

11

THE WITNESS: I didn't have a partner.

12

Q You mean you were lying to us?

13

A No. I had to think it over. When you say partner,

14

do you mean a person that is a partner on the money itself?

15

In other words, money -- A partner who puts in half, and the

16

other puts in the other half? Or a partner that takes it all

17

for himself?

18

Q You tell me what you meant when you said, "Yes,

19

I had a partner."

20

A No, I didn't have a partner. I did it on my

21

own.

22

Q Tell me what you assumed I meant by a partner.

23

A I thought you meant having -- In other words,

24

if there was anybody there. Somebody there would pick it up

R4 fls

25

for you.

41A

3/3

jb:ga

172

Di Palma-cross

Q But you were always by yourself in the business?

A I was usually by myself.

Q Usually or always?

A I wasn't the only bookmaker in that particular location.

Q The very first day that you began as a bookmaker, where was it?

A It was in the inspection shop.

Q Where is that?

A That's the location closer to the tracks.
Track -- I think 31.

Q Is that within the Transit Authority?

A Yes, sir.

Q Now, you certainly didn't hand out pamphlets saying that you were a bookmaker?

A Everybody -- well, everybody knows who did what. And I didn't have to.

Q You just announced to certain people that you were ready to become a bookmaker; is that right?

A I announced to certain people that anybody who wants to make a bet, that I would take it.

Q I assume at that time you were quite proficient in odds?

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- A No, sir, I wasn't.
- Q Weren't proficient?
- A No.
- Q Did you know what a hedge bet was at that time?
- A I knew what a hedge bet was. Yes. But when you say odds, you're talking about how you bet six to one, five to one, things like that. No, as far as mathematically, I am terrible. Very bad. That's why I wasn't a good book-maker.
- Q Did you know when something was at proper odds or not?
- A Pardon me?
- Q Did you know when something was proper or not as far as odds were concerned?
- A I didn't know. I couldn't tell.
- Q Let me ask you this. How did you get the odds on the Knickerbockers on a particular night?
- A I didn't take odds on the Knicks.
- Q Never?
- A No.
- Q Who ran your numbers?
- A I never ran numbers.
- Q You never took a number?
- A I took a number, but I -- but I never ran a

DiPalma-cross

number. I took a number maybe once in a while. I could have took a number, but I never take numbers as a bookmaker would take numbers.

Q You took numbers from anybody that came to give them to you?

A No, sir. Because I only had a \$200 bank in horses. If you call that a bookmaker --

Q Well, Mr. DiPalma, tell me this: When you got the bets, you told us yesterday that they were hedged into OTB or at the track.

A Racetrack.

Q Is that right?

A Mostly down the racetrack.

Q On a given day, how many bets would you pick up?

A I couldn't say.

Q Tell me what a big day was.

A \$130, \$140.

Q Would that represent seventy different bets or sixty different bets?

A Maybe.

Q Of that 130, on an average how much would you hedge at the racetrack or at OTB? All of it?

A No.

44A

175

DiPalma-cross

Q How much?

A It varies.

Q Tell me.

A According to the type of the horse.

Q Tell me what the average would be. Were there ever occasions when you did n't hedge any of the 130?

A Yes. Could have been a few occasions like that.

Q Were there ever occasions when you hedged the whole 130?

A No.

Q Most of it?

A If it was a 50-to-1 shot, yes.

Q Tell me this, when you took a \$2 bet from someone at the premises, and you went down to the racetrack and get that \$2, there was no way you could make any money on that \$2, was there?

A If it was a two if four bet.

Q Tell us, please, how that would work.

A If it was a two if four--in other words, if the first horse wins, the \$2 stays on that horse, and if on four dollars on the next horse. It becomes \$6 on each horse that wins.

Q But if you kept placing it out the window, you make no money; isn't that right?

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A You can make money. If you -- if you take
the winning money and put it all onto place and show, that
horse comes in second, all he gets is \$2 on the first horse.

Q Mr. DiPalma, I don't seem to understand that.
What I am saying, if I bet \$2 with you --

A Yes.

Q -- on a horse that was running at six to one --

A Yes.

Q --and you went to Aqueduct --

A Yes.

Q -- and took my \$2 and bought a ticket for it
and the horse won, wouldn't you have to give me the money
that you got at the window?

A Yes. I -- but I didn't receive many \$2 straight
bets. I received mostly two if four bets and one if two
bets.

Q Tell me and this jury how you make money from
a third party when you take the money, put it in the window
at Aqueduct, take the winnings and give it back to the
customer. Tell us what you earned.

A What I earn?

Q Yes.

A I earned a day at the track. That's all.

Q How?

1
2 A How? By -- I love to gamble.

3 Q You mean that they were giving you the oppor-
4 tunity to place these bets, so it was kind of an excuse for
5 you to go out to the track?

6 A I said to you before -- I said it yesterday.
7 I was a degenerate gambler and I had to go to the truck.
8 I just love to go. It didn't matter what they gave me. I
9 went down there. And if I like the horse that this parti-
10 cular person bet, I would bet it. And if it paid \$13, it
11 paid \$13. It didn't matter to me.

12 Q Does that make any sense from a bookmaking
13 parlance, Mr. DiPalma? Tell the jury, did --

14 A I was -- really, when -- you're talking
15 about a bookmaker. I am not a bookmaker. I am not a book-
16 maker that is making \$50,000 a year. You're talking to a
17 person who wasn't a good bookmaker in the sense that all I
18 had -- the most was a few hundred dollars bank.

19 Q How much did you make in 1970 as a bookmaker?

20 A 1970?

21 Q Yes.

22 A I was just -- I -- like I said, dates, I don't
23 know. But I can recall this. I was put into the TA 3/16/70.
24 I was not a bookmaker 3/16/70 when I came into the TA.

25 Q Tell me how much you earned the very first

year that you were a bookmaker.

A I made nothing. Like I said before, I made nothing. And I said before to you there were other people in that place that did what they had to do. Whatever they did was their business. All I know is I did not make money in that place as a bookmaker.

Q You earned no money the first year?

A No. I made nothing.

Q Did you lose money?

A Lose? Yes, sir, I did.

Q How about the second year?

A Yes, sir. I told you I -- like I said before, and once again I will repeat myself. I am not sure of dates. I am not sure of times. I'm trying to be as honest as I can. But I don't want anybody to think I'm a \$50,000 bookmaker when am not. And once again I will say it to the Court and to everybody in here that I didn't make money as a bookmaker.

Q You lost?

A I made money on my own when I bet on -- myself. When I went to the track I didn't bet \$2. I was a \$20 and \$30 better for myself.

Q Did you ever hit a big race?

A Did I ever hit a big race? Once.

Q How much?

48A

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AFTERNOON SESSION

2:15 P.M.

jb:ga

(Whereupon, the jury entered the courtroom.)

MR. NAFTALIS: Mr. DiPalma, just wait outside.

(Whereupon, the witness DiPalma retired from the courtroom.)

THE COURT: Mr. Naftalis.

MR. NAFTALIS: Yes, your Honor.

Thank you very much, sir.

FRANK DIPALMA, having been previously duly sworn, testified further as follows:

MR. NEWMAN: Your Honor, excuse me for just a minute, please.

CROSS-EXAMINATION

BY MR. LA ROSSA (Cont'd):

Q Mr. DiPalma, when for the first time did you meet Mr. Riccardi?

A The date, I can't tell you. The month, I think I can remember. Around the summertime. On a Saturday.

Q Of what year?

A Could have been '71 or '72. I am not sure.

Q Yesterday you told us, Mr. DiPalma, that you had an outstanding loan to National City Bank; is that correct?

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DiPalma-cross

A Yes, sir.

Q How much was that loan?

A Around, say, \$5,000.

Q When did you make that loan?

A I made them in parts.

Q When did you begin?

A Could have been '70, '71. 1970.

Q When did you end that -- making that loan of \$5,000? Do you understand my question?

A When did I end paying that loan?

Q No. Making. You said you made it in parts.

A Do you mean borrow?

Q Yes.

A Is that right?

Q Yes.

A I don't remember that one, when I stopped borrowing from them.

Q Can you give us an approximation?

A No, I can't.

Q Was it before this Saturday in the summertime when you met Ciro Riccardi?

A Like I said, it could have been a part. Not a whole. In other words, I could have borrowed a part, but I still owed the money.

2 Q Do you still owe them money now?

3 A No.

4 Q You paid them back?

5 A No, sir.

6 Q How about First National City Bank?

7 A That's what you just said, First National City
8 Bank. Didn't you?

9 Q I'm sorry. I did.

10 How about Chase Manhattan Bank?

11 A Chase Manhattan?

12 Q Did you ever borrow any money from them?

13 A Yes, sir.

14 Q How much?

15 A Oh, I think -- let's see. Roughly about --
16 like -- again, I'm not sure. It may be two thousand. It
17 may be eighteen hundred. Somewhere around there.

18 Q When you went to the First National City Bank
19 and borrowed the \$5,000, did they ask you why you wanted the
20 loan?

21 A You said five thousand. I said to you parts
22 of five thousand. You're saying --

23 Q Tell us what that -- what does --

24 A Well, borrowing eight hundred one time, and
25 borrowing another eight hundred another, possibly twelve

hundred another time, and then possibly borrowing eighteen hundred the last time.

Q Did they ask you why you wanted the loan?

A Yes. I assume they did.

Q What did you tell them?

A I just need the money.

Q Did they ask you what the purpose for the loan was?

A I think they did.

Q What did you tell them?

A What did I tell them? I told them a lot of things. But I just got the loan. That's all I know.

Q Tell us what you told them.

A I don't remember what I told them.

Q Can you tell us any one thing that you told them?

A No.

Q Did you just make things up to get the money?

A Pardon me?

Q Would you just make up reasons to get the money?

A I don't know. Maybe. If it meant getting the money.

Q Can you give me any one reason that you gave

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194

DiPalma-cross

to the First National City Bank for obtaining any loan from them?

A Could I give you any reason?

Q That you gave them.

A No. I don't know if I could give -- could give you a reason.

Q You can't remember?

A I can't. I can remember off and on. In other words, I could remember I could have said I needed to go away. I could have said --

Q Would it have been true?

A Pardon me?

Q Would that have been true?

A I don't know if it could have been true. It might not have been and it might have.

Q Would you make it up to get the money? Say that you wanted to take a trip?

A I don't know. Could have.

Q Did you?

A I am not sure if I did or not. Because I just told you, I wasn't sure if I said that to them.

Q But, Mr. DiPalma, you know you did make up reasons for the banks on various occasions which weren't true?

A Most probably could have been so.

1 195 DiPalma - cross/LaRossa

2 Q Is that right?

3 A Could have been.

4 Q Let me ask you this. When you sign those bank

5 statements, do you recall a statement at the bottom on any one

6 of the applications that you signed? Were you told -- where

7 it would say to you that obtaining credit by use of a false

8 statement is a Federal crime? Do you ever recall seeing that?

9 A I think so.

10 Q As you sit there now, you know you did fill out

11 applications with false statements to obtain loans; is that

12 right?

13 A Like I said, I wasn't sure what I told them.

14 Q Well, if you told them something that wasn't

15 true, that would have been a false statement; isn't that true?

16 Right?

17 A If you say -- specific personal loan, you don't

18 say what you need it for.

19 Q How many times have you told them, the bank,

20 what you needed it for, Mr. DiPalma?

21 A You just say, personal loan.

22 Q Is that what you wrote on every application --

23 A Mostly.

24 Q (continuing) -- that you ever submitted?

25 A I could believe mostly every application I wrote

54A

1 196

DiPalma - cross/LaRossa

2 was "personal." On every slip that -- you know, the bank
3 gives you. As a matter of fact, I don't even fill it out.
4 The guy filled it out for me.

5 Q Did he ask you questions?

6 A Sometimes. If you know the guy -- you know, if
7 you walk in and they see you make payments on your loans, and
8 your payments are up --

9 Q Who did you know in the First National City Bank?

10 A By name, I don't remember.

11 Q You remember him by face, though?

12 A Yes.

13 Q What branch of First National City Bank did you
14 deal with?

15 A Two.

16 Q Where?

17 A One on Avenue X, and the other at Kings Highway,
18 I believe.

19 Q How many loans in all did you take from the
20 First National City Bank?

21 A Two.

22 Q Were the loans used for gambling?

23 A The money was.

24 Q That's what I mean.

25 A Yes, sir.

55A

1 200 DiPalma - cross/LaRossa

2 A Anybody can get it from them.

3 Q When did you borrow from Household Finance?

4 A I borrowed from Household Finance when I was
5 around twenty years old.

6 Q How about during the 1970's?

7 A '70's? I could have. I could have renewed,
8 because I always owed them.

9 Q Well, you were asked the question of who you
10 owed yesterday on direct testimony in 1972, and you said
11 Household Finance.

12 A Yes, I did.

13 Q So I am asking you now, when you remember that,
14 when Mr. Naftalis asked you -- did you not?

15 A I remember the places I borrowed from.

16 Q Tell me when you borrowed from Household Finance.

17 A It could have been -- Like I said before, you
18 see, when you say borrow, I told you that I established credit
19 with Household Finance in the early -- and I always -- any time
20 I wanted to go back, if I owed them money, I could renew it.

21 And now --

22 Q How many times -- I am sorry.

23 A I am sorry. Go right ahead.

24 Q How many times did you borrow from Household
25 Finance after January 1st, 1970?

201

DiPalma - cross/LaRossa

A I don't know. A few times, maybe. I am not sure.

Q Did you ever borrow from Household Finance after June, 1972?

A After June, '72? I'm not sure.

Q Did you ever borrow from Household Finance after you met Mr. Riccardi?

A After? You mean after the incident? After what?

Q After you met him for the first time?

A I don't remember.

Q What is your best recollection?

A If I say, I don't remember, I don't remember.

Q No idea? You have no idea?

A I have ideas, but I'm a little confused because like I said, I know how many companies I borrowed money from. And maybe I can say Beneficial. I could say Household Finance. I could say Commercial Credit. I could say the Municipal Credit Union, First National, Bankers Trust.

And did I leave anything out? Yes, Chase Manhattan.

Anybody else? I don't know.

Now, when I borrowed this money, I borrowed it from Peter to pay Paul. And in that area, like. In other words, it would be strips.

57A

1 202

DiPalma - cross/LaRossa

2 Q Do you remember any purpose you gave for any
3 loans you made through Beneficial Fianncce?

4 A Once again, I don't know how many purposes I
5 put down on those papers. I could have put down "personal."
6 I could have put down "furniture." I could have put down
7 numerous amounts. But I'm not sure what I put down.

8 Q Put down what?

9 A I could have put down a lot of things. I am
10 not sure what I put down.

11 Q Did you ever put down that you wanted to take
12 a vacation?

13 A Once again, you're asking me the same thing.
14 I just told you, I don't know.

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R2 fls 16

(continued on next page.)

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2 Q Commercial Credit Union, when did you borrow
3 from them?

4 A That is not a credit union. That's a finance
5 company. Commercial Credit. Borrowed from them?

6 Q Credit Union.

7 A The Municipal Credit Union.

8 Q Sir, this is what you told us yesterday. I
9 am reading, Commercial Credit Union.

10 A Commercial Credit is a finance company. And
11 now it's I think American Finance took it over from what I
12 read in the papers.

13 Q Did you borrow money from them?

14 A Yes. I borrowed from the -- it's called the
15 3 C's. Commercial Credit Corporation.

16 Q Can you tell us when you borrowed from them?

17 A I borrowed -- I don't remember. I borrowed
18 from them maybe in 1970.

19 Q How much did you borrow from them?

20 A Oh, maybe around \$1,000 to \$1,400.

21 Q Do you remember the purpose of the loan?

22 A Could have been personal again.

23 Q Do you remember what you told Commercial
24 Credit the purpose of the loan was?

25 A Personal.

1
2 Q Did you pay that loan back?

3 A No, sir.

4 Q Did you pay the Beneficial Finance loan back?

5 A I just explained to you I was on -- was on
6 personal bankruptcy. I didn't have to pay them back.

7 Q I didn't ask you that. I asked you whether you
8 paid them back.

9 A I told you, no.

10 Q Household Finance?

11 A No.

12 Q Chase Manhattan?

13 A No.

14 Q How about Bankers Trust?

15 A No.

16 Q Did you ever borrow money from them?

17 A Yes.

18 Q When?

19 A In the '70's.

20 Q Early 1970?

21 A No. I don't know. It had to be past '71 or '72.
22 It had to be past that.

23 Q Was it before or after the first time you met
24 Zero Riccardi?

25 A I'm not sure about that. It could have been --

probably that could have been when I met him.

Q How much did you borrow from Bankers Trust?

A 22. Possibly 23.

Q Hundred?

A Yes.

Q Can you tell us what the purpose of that loan was for, what you told Bankers Trust the purpose was?

A I don't know. It could have been personal.

Q You don't have any recollection?

A Like I said, I'm not sure what I said.

Q Any other financial institutions that you borrowed from in the early 70's?

A Beneficial.

Q Anybody else?

A Family Finance.

Q How much did you borrow from them?

A Around 1,400 I think.

Q When was that?

A I don't remember the time, the date.

Q Was it before the date you first met Zero Riccardi?

A I met him then. I met him then when that loan was on.

Q I'm sorry.

3 1
2 read with me and tell me if you were asked this question and
3 did you give this answer:

4 "Question: How much did you intend to borrow?

5 "Answer: \$1,000."

6 Did you make that answer to that question?

7 A I might have, yes.

8 Q Did you?

9 A Yes, if I said it here it must be right.

10 Q Was it true?

11 A How much did I intend to borrow?

12 Q Yes.

13 A \$1,000.

14 Q So that's a true answer, right?

15 A Yes.

16 Q Then going to the next question:

17 "Question: What were the terms of the repayment of
18 that money?

19 "Answer: \$50 a week vig."

20 Did you make that answer to that question?

21 A Yes.

22 Q The next question:

23 "Question: What did you understand "vig" to mean at
24 that time?

25 "Answer: At that time I never heard of vig."

1

2

A

I did not intend to mislead anyone.

3

Q

So what you are telling us, it was an honest

4

mistake?

5

A

Yes, it was an honest mistake.

6

Q

Yet you knew what "vig" meant all your life?

7

A

I knew what "vig" meant.

8

Q

Any question about it?

9

A

No, there is no question.

10

Q

The reason you knew what vig meant so well was

11

because you have lent out money for vig payments, haven't

12

you?

13

A

No, sir.

14

Q

Never did?

15

A

No, I never lent a dime for vig payments or

16

any kind of payments.

17

Q

Did you ever lend a dime for any kind of pay-

18

ments?

19

A

To lend 10¢ to somebody for interest?

20

Q

Did you ever lend any money for interest?

21

A

No, I did not.

22

Q

Is that the end of the conversation with Mr.

23

Riccardi that day?

24

A

I just went back the following day.

25

Q

Is that the end of the conversation that every-

6 DiPalma - cross - LaRossa

other day and said that Mr. Riccardi had a goatee that a goatee meant a mustache?

A Do I believe that? I said that when I came on the stand. It was yesterday, and I was nervous. I did say -- say the same thing -- I meant mustache. I didn't mean goatee as far as goatee from the bottom.

Q Didn't you tell us that you looked out from a side window of your house?

A No, the first front window.

Q The first front or side window or whatever, and that you were in such a position that you could see Mr. Riccardi and you knew it was him because you recognized his goatee?

A Like I said before, I could have said mustache.

Q That's because you were nervous?

A Why not?

Q How many times have you paid off a hit on the numbers?

A I never paid off on any hit on any numbers because like I said before, I never picked up numbers.

Q You never took numbers?

A No.

Q Are you telling us now that you never took a number?

8 DiPalma - cross - LaRossa

A No, I wouldn't take it. Why would I have to take any?

Q And you never took sports action from anyone in that Transit Authority, did you?

A Do you mean football games and basketball and what-not?

Q What do you mean?

A I don't know what you are talking about.

If it was the summer, you can't bet basketball. You can only bet basketball -- no, I didn't take basketball bets off anybody.

If it was baseball, I bet people straight there. I will bet you \$20 on the game. I will bet \$40. I can't say -- I made the bets personally.

Q You bet between yourself?

A Yes, is there any law against betting on games?

Q How many bets would you make on basketball?

A How many bets would I make? Let's talk about the season.

Q On any given night, would you say hundreds of dollars?

A I could have bet that.

Q \$200?

A No.

1 2 you believe that was something that they wanted you to do?

3 A If they did ask me that question?

4 Q Yes, if one of the agents or one of the Assistant
5 United States Attorneys did.

6 A They didn't ask me that question. They didn't
7 say nothing to me like that.

8 Q If Agent Ruffels testified here today that that
9 is what he said to you, that would be a lie, wouldn't it?

10 A I don't know if he said that to me or not. I
11 was putting on that thing and I was very, very nervous and it
12 was very hard -- anybody under those circumstances --

13 Q Mr. DiPalma, would you think for a minute --

14 MR. NAFTALIS: I would like the witness to
15 finish the answer.

16 THE COURT: Yes.

17 A Like I said before, anybody under those cir-
18 cumstances that did what I did, any normal person would be
19 nervous and would tend to forget what was said and what was
20 I was supposed to do.

21 MR. LA ROSSA: Your Honor wants me to let him
22 finish?

23 THE COURT: You asked him a question.

24 MR. LA ROSSA: Do you remember what the ques-
25 tion was, sir?

1 3

DiPalma-cross-LaRossa

236

2

THE COURT: Go ahead.

3

MR. LA POSSA: I move to strike that answer.

4

It's absolutely not responsive to the question.

5

THE COURT: Motion denied.

6

BY MR. LA POSSA:

7

Q Did Mr. Ruffels tell you when he hooked that

8

machine up on you that it would help if you got some threats

9

out of Ciro Riccardi?

10

A No, sir, and I know what Mr. Ruffels told me,

11

not to provoke the man, not to provoke.

12

Q Is that what he said?

13

A Not to provoke, yes.

14

Q In other words, don't get him angry?

15

A Yes, because they feared my life.

16

Q So what I just asked you would be the opposite

17

of that?

18

A I guess so if that's what you're asking.

19

THE WITNESS: Your Honor, may I have a drink of

20

water?

21

THE COURT: Yes.

22

Mr. LaRossa, while we have that brief recess,

23

would you pull the lectern back a little?

24

MR. LA POSSA: Surely. Is that all right?

25

THE COURT: Yes.

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header on Sunday. They were underdogs. I won 4 in a row on that. That was in-1972.

Q 1972?

A I think they won 4 in a row.

Q The White Sox?

A Yes.

Q Do you remember whether they were home or away at that time?

A Who, the White Sox?

Q Yes.

A I think they were -- the White Sox were home.

Q Can you tell me any one pitcher that pitched for the White Sox, pitched for the White Sox on any one of those games?

A I think the pitchers are traded now.

Q Can you remember their names?

A Pardon me?

Q Can you remember their names?

A Tommy John.

Q Anybody else?

A They didn't win on pitching, they were underdogs. I don't remember. There weren't that many good pitchers.

Q Do you remember who they played?

DiPalma-cross/LaRossa

10 1

2

A Yes. The White Sox?

3

Q Yes.

4

A Minnesota. Oh, they had Blyleven pitching on

5

a Sunday.

6

Q That was the first game?

7

A I think that was --

8

Q Or the second game?

9

A I don't know.

10

Q Was it Minnesota?

11

A Minnesota played the 4 games.

12

Q Is there anything else you remember about that

13

summer of '72?

14

A (No response.)

15

Q Do you remember any other betting sprees?

16

A Yes, I think I do. I think I lost -- no, I

17

don't know if this right now, I am thinking because it

18

happened to me, I lost 13 in a row on the Chicago Cubs.

19

Q Is that the summer of '72?

20

A I don't remember exactly the time, it was in

21

the summer. 13 in a row. I lost on the Cubs 13 in a row.

22

As a matter of fact, the 14th game I didn't bet it and they

23

won.

24

Q Mr. DiPalma, how many payments of \$125 did you

25

make?

331

DiPalma-cross-LaRossa

top. I remember borrowing twenty two hundred, I believe, or maybe twenty five, I'm not sure. But I know that when they asked me these questions, "What was your total amount of money that you owed each individual bank or finance company," I gave \$3,800 to Bankers Trust and down the line I gave exact what I thought to be true, the right amounts of money that I owed the rest of the banks and finance companies sir.

THE COURT: In August, 1972?

THE WITNESS: See, your Honor, it says --

THE COURT: This is what you said you owed in August of 1972?

THE WITNESS: I owed that \$3,800 in August of 1972?

THE COURT: Is that what you're saying?

THE WITNESS: See, I don't remember this well in a sence because when I went with my lawyer, he did all the paper work. All I did was bring my books there to him. He just wanted my accounts. I didn't sit down and talk to my lawyer and say exact what I owed in parts or how it was done.

BY MR. LA ROSSA:

Q So Mr. DiPalma, now that you sit there, you know that you didn't take \$3,800 from Bankers Trust?

2 A I'm not sure if I took \$3,800 from Bankers
3 Trust. I think I took twenty three, twenty four hundred from
4 Bankers Trust -- as a matter of fact, I went to two Bankers
5 Trust companies. One was on 36th and I believe the other one
6 was on Fort Hamilton Parkway.

7 Q Was the first one in April, sir?

8 A It might have been.

9 Q When was the next one?

10 A I don't remember when the next one was exact.

11 Q Was it long after you met Ciro Piccardi?

12 A I don't know if it was before, I don't know if
13 it was after.

14 Q But it certainly wasn't one loan that you got
15 \$3,800?

16 A I believe I borrowed this in a part, I think.

17 Q Sorry?

18 A I think I borrowed this as a part.

19 MR. LA ROSSA: Would you mark this for identi-
20 fication, please?

21 THE CLERK: One document marked Defendant's
22 Exhibit C-3 for identification.

23 (So marked)

24 Q Mr. DiPalma, on March 27th -- withdrawn. On
25 March 27, 1972, did you go to Bankers Trust, 1775 Broadway,

CROSS-EXAMINATION

BY MR. LA ROSSA (Cont'd):

Q Did you ever see that affidavit?

A Did I ever see John W. Waters?

Q Have you ever seen this paper?

A No, I have never seen that paper.

Q Now, let's go to the second line, sir.

Did you swear under oath before the Bankruptcy Court as to the truth of the fact that you borrowed from the First National City Bank, \$3,800 on April 30, 1972?

A Yes, I probably said that.

Q Let's go to the third:

Did you swear under oath as to the third item, Chase Manhattan Bank --

A I think there is a mistake on the Chase.

Q Let's go through the first and then you tell us what you would like.

Chase Manhattan Bank, Rockaway Parkway and Rutland Road, Brooklyn, New York, on May 19, 1972, the amount of \$800 was borrowed.

A Once again, I think there is also a mistake in National City Bank, too.

Q Is that statement true?

A The \$800?

72A

340 DiPalma - cross - LaRossa

Q Yes.

A That I borrowed from Rutland Road?

A Chase Manhattan Bank.

A Chase Manhattan. I think either \$800 or more but I had another loan at their other branch.

Q What about this branch, did you borrow \$800 from them?

A I think I did.

Q You swore to the truth of that, didn't you?

A Once again I gave this to my lawyer and he wrote this up.

Q Commercial Credit, Rockaway Parkway and Seaview Avenue, December, 1971, \$900; is that correct?

A I believe that could be correct.

Q Did you swear to the truth of that statement before the Bankruptcy Court?

A I don't know if they asked me all these questions about this.

If I said I swear to it, I said I did, I did. I am not sure now. If I said this, I said this. I must repeat myself, I gave this stuff to my lawyer. What happened after that, I am not sure.

Q Did you borrow \$900 from Commercial Credit on December 19, 1971?

- 1 341 DiPalma - cross - LaRossa
- 2 A I could have borrowed from before that.
- 3 Q Did you borrow it in December of 1971?
- 4 A I am not sure if I borrowed it in 1971.
- 5 Q Is that what the form says?
- 6 A The form says it. You are asking me and I am
- 7 telling you that I am not sure.
- 8 Q Beneficial Finance, 86th Street and Bay Parkway
- 9 did you borrow from them \$1,889.36.
- 10 A You can borrow \$1,800 -- that is the interest
- 11 of \$1,400. If you borrow \$1,400, that's their interest.
- 12 Q Did you borrow \$1,400, April 1, 1972?
- 13 A I believe I might have. My wife and I might
- 14 have borrowed this. This is me and my wife.
- 15 Q Household Finance.
- 16 A Household Finance
- 17 Q 86th Street and 12th Avenue, Brooklyn, New York,
- 18 did you borrow from them two days later, April 3, '72,
- 19 \$1,889.36?
- 20 A I am not sure of the dates I borrowed this
- 21 money. The exact date and time I borrowed the money.
- 22 Q Did you swear to the truth of that statement?
- 23 A I swore to the truth of that statement.
- 24 Q Family Finance, 2211 Church Avenue, Brooklyn,
- 25 New York, did you on December 10, '71, borrow \$1,400 from

74A

1 342 DiPalma - cross - LaRossa

2 that bank?

3 A Bank --

4 Q Bank, company or whatever.

5 A I don't know if I borrowed \$1,400 from them
6 at the time.

7 Q Does the statement say that?

8 A Yes.

9 Q Did you swear to the truth of it?

10 A I swore to the truth.

11 Q Municipal Credit, City of New York, March 26,
12 1972, \$2,500; did you borrow \$2,500 from them on March the
13 26th, 1972?

14 A This is either \$2,500 or it's either a mixture
15 between \$1,200 at one time, plus \$1,300 another. Some of
16 these could possibly be wrong from what I think. I am not sure.
17 They could be wrong.

18 It could be either a couple of dollars up or
19 a couple of dollars down. What it says there, it says there,
20 right.

21 Q Sir, would you go through this, please, and tell
22 me whether or not your signature is on every page of that
23 exhibit?

24 (Document given to witness.)

25 Q It certainly is.

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DiPalma - cross - LaRossa

MR. LA ROSSA: I offer it into evidence.

MR. NAFTALIS: No objection. The number is C-1, sir.

THE CLERK: Defendants' Exhibit C-1, received in evidence.

MR. NEWMAN: What was the marking on that, sir?

MR. LA ROSSA: C-1.

BY MR. LA ROSSA:

Q Now, sir, on the very first page, did you sign under a statement that says -- do you mind if I stand next to him to read it to him -- "I, Frank DiPalma, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained herein are true to the best of my knowledge, information and belief."

Did you sign immediately under that, is that your signature?

A Yes -- I don't know if they said that to me. I just signed it.

Q On the left side of that it says, "Subscribed and sworn to before me" -- "Subscribed and sworn to before me this 3rd day of August, 1972," and there is a signature I can't read.

Can you read it?

A No.

1 344 DiPalma - cross - LaRossa

2 Q Was that signed in your presence?

3 A I don't know. I don't know if anybody signed
4 it. All I know I signed it. I don't know who signed it
5 here or there.

6 Q Were you told that you were swearing to the
7 truth of that?

8 A I don't remember if I was told that.

9 Q Did you read it before you signed it?

10 A I just signed it.

11 Q Never read it -- you never looked at one page
12 of that?

13 A No.

14 Q When you were asked by the bankruptcy referee
15 whether or not that particular exhibit, C-1 in Evidence, was
16 true in all respects, you answered "Yes, sir," did you not?

17 A Yes, sir, I did answer "yes, sir."

18 Q Why didn't you tell the bankruptcy referee that
19 you never read it?

20 A Because it didn't matter. As far as I was
21 concerned, I thought it to be the truth.

22 Q Did you read it before you signed it?

23 A I don't know if I did or not. I might have
24 read it. I don't know what happened in 1972 clearly time for
25 time, it's impossible.

You can't expect any person to go into this

1 345 DiPalma - cross - LaRossa

2 Courtroom and remember what happened three years ago and
3 to be exact and precise, word for word.

4 I cannot remember and I am going to pursue
5 that with you all day. If I can remember an incident, I will
6 remember and try my best to answer you. I can't remember
7 these things, I can't.

8 Q Mr. DiPalma, how many times have you sworn to
9 tell the truth under oath in your life?

10 A I don't know. I don't know.

11 Q Twenty?

12 A I don't know.

13 Q Was that the first time you ever did it before
14 the Bankruptcy Court?

15 A That could have been, I don't know.

16 Q Isn't that a unique experience when you are
17 sworn to tell the truth in a Court and someone asks you
18 questions and answers?

19 A It wasn't the same type of Court that this
20 Courtroom was. It was just walking over to the Judge, the
21 lawyer took your papers, and you spoke to the Judge, and that
22 was all.

23 I don't remember signing papers. I don't
24 remember every single one of these things that happened.
25 I just remember that I went to my lawyer -- I gave him my

DiPalma - cross/Newman

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about your testimony.

A When?

Q After you met with Mr. Naftalis a couple of months ago?

A Yes.

Q How many times did you meet with Mr. Ruffels?

A Mr. Ruffels -- many times.

Q Half dozen? Ten?

A I don't know exactly the figure on how many times. I said many times.

Q And during these many times did Mr. Ruffels go over your testimony with you.

A Sometimes.

Q Did he show you your Grand Jury testimony?

A Did he show me -- I don't know if he showed it to me, no.

Q But one thing is clear, when you left the witness stand here on Thursday and went out to lunch neither Mr. Ruffels nor Mr. Naftalis talked to you before you started your redirect examination?

A No, sir, they didn't.

Q Do you know what I mean by redirect examination?

A No.

Q That's when Mr. Naftalis asked you questions

1
2 again Thursday afternoon?

3 A Yes.

4 Q Prior to that time, and during the recess ,
5 he didn't say a word to you?

6 A No.

7 Q He didn't show you Grand Jury testimony,
8 for examination, and say, what did you mean when you gave
9 that answer?

10 A No.

11 Q Do I understand you correctly then when he
12 had you on redirect examination and he asked you to look at
13 page 17 of your testimony of June 13th, 1972, that was the
14 first time Mr. Naftalis talked to you about that testimony?

15 A Yes, sir.

16 Q And that's your answer?

17 A That's right.

18 Q He never showed it to you before?

19 A When? He showed it to -- months ago he could
20 have showed it to me.

21 Q Between months ago and Thursday afternoon he
22 never showed it to you?

23 A No, sir, he didn't

24 MR. NAFTALIS: I object to Mr. Newman shouting. It
25 isn't necessary.

1
2 MR. NEWMAN: I apologize. I left the podium.
3 I apologize.

4 THE COURT: Come up here a minute.

5 (Side bar.)

6 THE COURT: Mr. Naftalis made a representation
7 to the Court that on Thursday he was going to the
8 dentist during the noon hour, and I assume he kept
9 that dental appointment.

10 I assume he didn't have time to do what you are
11 suggesting he did do.

12 I don't know what you are trying to do, but
13 you better be careful because if you are trying to
14 create a false impression in this jury's mind I am
15 going to instruct them that he went to the dentist.

16 MR. NEWMAN: I'm interested in one question here
17 on page 17, which Mr. Naftalis -- see here, if you
18 remember MR. Naftalis asked him --

19 THE COURT: It isn't unusual. I noticed the
20 same thing when I read the Grand Jury testimony.
21 When you first went after that, it was like taking
22 something out of context and you did it and I thought
23 it was not a very nice thing to do, taking it out of
24 context in the way you did, but it doesn't necessarily
25 mean that he, when he reread that whole thing, didn't

SIA

1
2 see it just the same way as I saw it when I first
3 read it.

4 What you are suggesting is that Mr. Naftalis
5 has made a misrepresentation to this Court, and I
6 think it's quite reprehensible.

7 MR. NEWMAN: Judge, that's not my intention
8 at all. What I am trying to find out is if he was
9 shown this question --

10 THE COURT: You forget, he asked for per-
11 mission to go to the dentist.

12 What are you going into this nonsense for?

13 MR. NEWMAN: I wanted to know if Mr. Naftalis
14 showed him the question and this answer and asked
15 him to explain it.

16 THE COURT: I don't think you need it.

17 MR. NEWMAN: That's what I wanted to know.
18 That's the question and answer I'm interested in.

19 THE COURT: Ask it. But don't make suggestions
20 out of context. You are leading the jury into
21 believing that Mr. Naftalis took him out and coached
22 him when you know and I know and I assume based on
23 his representation, that he wasn't even here to do
24 that.

25 MR. NEWMAN: I'm interested in one question.

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Sylf fles. 21

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THE COURT: I think that's what is reprehensible. You shouldn't create that impression when the facts are otherwise.

Why do you ask those questions if you are --

MR. NEWMAN: I'm talking about Grand Jury testimony.

THE COURT: Why do you ask those questions when you know the facts are otherwise?

MR. NEWMAN: Am I going to argue to the jury that Mr. Naftalis improperly prepared him? There is nothing wrong with preparing a witness.

THE COURT: He wasn't here to even talk to him about it.

MR. NEWMAN: To go over that one question with him.

MR. NAFTALIS: I will make that representation to the Court. After I left this office, I went upstairs to my office and put the files down and left by car.

(continued next page.)

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DiPalma-recross-Newman

83A

514

1
2 MR. NEWMAN: Do you know if Mr. Ruffels asked
3 him about it? Did Ruffels ask him about this question?
4 I will get off it if you don't know.

5 MR. NAFTALIS: No.

6 MR. NEWMAN: That's the question I'm interested
7 in.

8 MR. NAFTALIS: I would like an instruction that
9 I was given permission to go to the dentist.

10 THE COURT: I will do that.

11 (Open Court)

12 THE COURT: The reason why I interrupted Mr.
13 Newman's questioning is, last Thursday before lunch
14 Mr. Naftalis asked the Court for permission to go to
15 the dentist, that's why I adjourned earlier during the
16 Thursday lunch hour, and Mr. Newman knows that Mr.
17 Naftalis went to the dentist during the noon hour and
18 yet he's persisted in asking these questions trying
19 to create an erroneous impression in your mind. Mr.
20 Naftalis has just told me that he did go to the dentist
21 during the noon hour and didn't talk to this witness.

22 MR. NEWMAN: May I proceed, Judge?

23 THE COURT: Yes.
24
25

1 7 J. DiPalma-direct

2 THE COURT: Sustained.

3 Q What did you tell him when you told him not to
4 do it?

5 A I says, "Don't take the knife." I says, "You
6 don't need the knife downstairs." He says, "Leave it here."

7 Q And did he leave it?

8 A Yes, he did.

9 Q Was he carrying any weapons when he went down-
10 stairs?

11 A No, he wasn't.

12 Q What happened once you got down the stairs with
13 the stick?

14 A Frank and Patty were standing by the car and
15 Zero went around the corner.

16 Q He left?

17 A Yes.

18 Q What, if anything, did you do after that?

19 A I told Frank let's go upstairs.

20 Q And then what, if anything, did you do?

21 A We went upstairs.

22 Q And anything else?

23 A No.

24 Q Do you remember calling the FBI, Mrs. DiPalma?

25 A Yes.

1 8

J. DiPalma-direct

2 Q Did you speak to anyone at the FBI?

3 A Art Ruffels.

4 Q What, if anything, did you tell him?

5 A I told him exactly what happened.

6 Q Are you referring to that altercation?

7 A The incident that happened, yes.

8 Q Mrs. DiPalma, who runs the finances in your
9 home?

10 A Excuse me?

11 Q Who takes care of the money in your house?

12 A I do.

13 Q Who takes care of the taxes?

14 A I bring it to an accountant.

15 Q You bring it to the accountant?

16 A Yes.

17 Q Who takes care of the budget at home?

18 A I do.

19 Q The household money?

20 A I do.

21 Q Would it be fair to say that you oversee all
22 the finances in the family?

23 A I take care of all the bills, yes.

24 Q Why?

25 A Because my husband is not very good at figures.

1 14

J. DiPalma-cross-La Rossa

549

2 A Yes.

3 Q And a gentleman by the name of Patty?

4 A Yes.

5 Q Did you see Mr. Riccardi strike your husband?

6 A I seen fists flying but I seen my husband lean-
7 ing against the car.

8 Q You never did see Mr. Riccardi strike your hus-
9 band, though, did you?

10 A No, but he was standing there.

11 Q Did you see your husband strike Mr. Riccardi?

12 A No.

13 Q Did you see his hands flying?

14 A His hands were on his face.

15 Q Tell me, was this -- what time of the day was
16 this?

17 A I'd say about 3:00 o'clock.

18 Q At night?

19 A Yes.

20 Q Was it dark out?

21 A No.

22 Q Were the street lights on?

23 A Yes.

24 Q Had you ever seen Mr. Riccardi before that day?

25 A Yes.

4 1
2 Frank Di Palma?

3 A Yes.

4 Q Did you ever place bets with Mr. Di Palma?

5 MR. NAFTALIS: I object to the way that question
6 is posed.

7 THE COURT: I will allow it.

8 A No, I didn't place bets with him.

9 Q Were you ever in anyone's company when they
10 placed bets with Mr. Di Palma?

11 A No.

12 Q Did Mr. Di Palma ever come to you and have a
13 conversation with you about betting slips?

14 A Yes.

15 Q Did he ever ask you to help him with the slips?

16 A Yes.

17 Q Mr. Daversa, sometime in May, 1972 did Mr. Di Palma
18 take you to meet with someone so that you could borrow money
19 from him?

20 A No.

21 Q You are sure of that?

22 A Yes.

23 Q Will you look around this courtroom, sir, and
24 tell us whether there is anyone here that you recognize that
25 Mr. Di Palma ever introduced you to. In particular, would

1 4 Zicoletello - direct

2 DiPalma?

3 A Yes.

4 Q Become friendly with him?

5 A Yes.

6 Q Did you ever have a conversation with

7 Mr. DiPalma about bets?

8 A Yes.

9 Q Will you tell us where that occurred and
10 when?

11 A Well, it was at work one night. He come
12 over to me and just --he was talking about, you know,
13 booking bets and the conversation he asked me if I knew
14 what he wanted, you know, put any bets in this sports or
15 anything.

16 Q What did that mean to you, sports?

17 A Well, football or, you know, something like
18 that?

19 Q Baseball?

20 A I guess baseball when he meant sports.

21 Q Did you ever bet with Mr. DiPalma?

22 A No.

23 Q Were you friendly with Mr. DiPalma?

24 A Well, not right away. He looked me up. Through
25 a friend of mine.

1 5

Zicoletto - direct

2 Q When is the last time you saw Mr. DiPalma?

3 A I think it's more than three years. At least
4 three years or better.5 Q Did you ever see Mr. DiPalma take bets from
6 other people at the Transit Authority?

7 A Yes.

8 Q Did you ever see him make betting slips?

9 A I didn't see him make betting slips but he
10 was -- the slips, the horses or something. I seen him
11 taking bets.

12 MR. LA ROSSA: Your witness.

13 MR. NAFTALIS: I have no questions, your
14 Honor.

15 MR. LA ROSSA: You are excused.

16 Sorry.

17 MR. NEWMAN: I have no questions.

18 THE COURT: All right. You may step down.

19 (Witness excused.)

20 THE CLERK: Stand here, please and face me.

21 (continued next page.)
22
23
24
25

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1 6 Tomasino - direct
2 J U S T I N T O M A S I N O , called
3 as a witness herein, having been first duly sworn
xxx 4 by the Clerk of the Court, was examined and testified
5 as follows:
6 DIRECT EXAMINATION
7 BY MR. LA ROSSA:
8 Q Mr. Tomasino, how old are you?
9 A Fifty-one.
10 Q Are you married?
11 A Yes, I am.
12 Q Do you have a family?
13 A I have three children, a wife.
14 Q Do you have grandchildren?
15 A Two grandchildren.
16 Q By whom are you employed?
17 A New York City Transit Authority.
18 Q For how many years?
19 A Twenty-six years.
20 Q Have you ever been arrested for any charge?
21 A No, sir.
22 Q Then certainly never been convicted of any
23 crime either, right?
24 A Well, a minor traffic violation.
25 Q Mr. Tomasino, did there come a time when you

1 7 Tomasino - direct
2 met Frank DiPalma?

3 A Yes.

4 Q DURING the years 1970, '71 and '72, were you
5 employed at the same place he was employed?

6 A Yes, I was.

7 Q Would you tell us where that was?

8 A The New York City Transit Authority Shop,
9 Avenue X and MacDonald Avenue.

10 Q Are you still employed at the same place?

11 A No, I'm just retired.

12 Q Mr. Tomasino, did there come times when
13 you would place bets with Mr. DiPalma?

14 A Yes, I did.

15 Q Did there come times when you saw other people
16 place bets with Mr. DiPalma?

17 A Yes.

18 Q Were you present and did you hear those bets
19 being made?

20 A Yes.

21 Q Will you tell us, if you can, what bets
22 first you made with Mr. DiPalma?

23 A Well, as a rule I only placed numbers and
24 horese with Mr. DiPalma. I never played no sports.

25 Q Are you telling us that Mr. DiPalma would

1 8 Tomasino - direct

2 take number bets from you?

3 A Yes.

4 Q Did you see Mr. DiPalma take number bets from
5 anyone else?

6 A Oh, on many occasions.

7 Q Do you know anything that hit the numbers?

8 A I, myself.

9 Q When Mr. DiPalma was taking numbers?

10 A I, myself, hit the number.

11 Q Was Mr. DiPalma the bookmaker when you gave
12 him that number?

13 A To my knowledge he was.

14 Q How much did you hit that number for?

15 A \$250.

16 Q Did you ever place sports action with
17 Mr. DiPalma?

18 A No, I never placed a sport bet but I knew he
19 would take them.

20 Q Were you present when you heard other people
21 make sport bets?

22 A Yes. Some of the fellows we worked with
23 used to bet baseball and football and basketball.

24 Q Mr. Tomasino, did there come a time in May,
25 1972 when Mr. DiPalma -- withdraw the question.

9 Tomasino - direct

Did there come a time when Mr. DiPalma
left work for a period, in 1972?

A Yes, I think he did. Yes.

Q At that time, did he owe you any money?

A \$225, from a number.

Q By the way, do you know Mr. Riccardi?

Would you stand up, please.

(Addressing the Defendant.)

A I think I've seen him around, yes. I've been
in the neighborhood -- in that neighborhood for quite a
while.

Q Would you mind taking your glasses off?

A Yes, I've seen him around.

Q Is he a friend of yours?

A Oh, no. No.

Q Have you ever socialized with him?

A No.

Q Has he ever been in your home?

A No.

Q Have you ever been in his home?

A No.

Q Mr. Tomasino, did there come a time during
that period when Mr. DiPalma did not go to work when you
went to his home?

1
2 THE COURT: All right.

3 Q Would you tell us the conversation you
4 and Mr. DiPalma had?

5 A I asked him -- Mr. Frank DiPalma, I says,
6 I asked him what was going on and when was I going to get
7 my money.

8 Q How much money are we talking about?

9 A I was talking about \$225 from the number and
10 \$103.50 he owed me for repair on his car.

11 Q Will you tell me what you earned a week
12 at that time, sir? Take-home pay, if you can recall.

13 A \$170.00 a week.

14 Q Now, what did Mr. DiPalma say to you if you
15 recall?

16 A He says he had some problems and he had a
17 little trouble and he didn't have the money. So I told
18 him, I says, "Frank, you've been promising me the money
19 for a long time and it's not right what you are doing."

20 So he says, "Look, don't pressure me."

21 You know, he -- he backed up a little bit and
22 he says "Don't pressure me," he says. "You pressure me,"
23 he says, "I'll go to the FBI."

24 I says, "What are you talking about, you
25 know."

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
AUGUST 29, 1975

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL JAMES LA ROSSA

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY. in count 2

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S. Code, Sec. 894, in that on or about and between May 1, 1971, and May 18, 1972, both dates being approximate and inclusive, the defendant, with another, knowingly used extortionate means within the meaning of Sec. 891(7) of T-18, U.S.C. to attempt to collect and to collect from another, a debtor, an extension of credit; to wit: the defendant used violence and implicitly threatened the use of violence and other criminal means to cause harm to the person of the said debtor

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 20 years,

that is, the maximum fixed by statute, and for a psychiatric study as described in T-18, U.S. Code, Sec. 4208(c), the results of such study to be furnished this Court within three months, unless the Court grants further time not to exceed three months, whereupon the defendant shall be returned to this court and the sentence of imprisonment herein imposed shall be subject to modification in accordance with T-18, U.S. Code, Sec. 4208(b). Bail continued pending appeal.

SENTENCE
OR
PROBATION
ORDERSPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

COMMITMENT
RECOMMEN-
DATION

AUG 29 10 56 AM

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

UNITED STATES OF AMERICA,

v.

No. 73 CR 556

CIRO RICCARDI, et ano.,

AUG 29 1975

NOTICE OF APPEAL

Defendants.

S I R :

PLEASE TAKE NOTICE that Ciro Riccardi hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the Hon. Thomas C. Platt, United States District Judge, on August 29th, 1975, wherein the defendant was convicted of one count of violating Title 18, United States Code, Section 894, and sentenced upon said conviction to The Custody of Atty. General to Study under T. 18 S. 4205 (c) For 90 Days

Dated: New York, New York
August 29th, 1975

Yours, etc.

TO:

HON. DAVID G. TRAGER
United States Attorney
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Defendant
Office and Post Office Address
522 Fifth Avenue
New York, New York 10036
687-4100

By:

JAMES M. LA ROSSA
A Member of the Firm

Defendant's Home Address:
2404 Bragg Street
Brooklyn, New York

Service of three © copies of the [illegible]
is admitted this 23 day of OCT 1975

OCT 23 10 44 AM '75

EAST. DIST. N.Y.

P. G. [illegible]